Vol. II

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1938

No. 314

WICHITA ROYALTY COMPANY ET AL.,
PETITIONERS,

vs.

CITY NATIONAL BANK OF WICHITA FALLS ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

PETITION FOR CERTIORARI FILED AUGUST 30, 1938.

CERTIORARI GRANTED OCTOBER 17, 1938.

Period From	To		Amount
6- 1-27	5-31-28	Sale of Oil. No Gas. Humble-Chaney	162.90
6- 1-27	5-31-28	Sale of Oil. Prairie-Mid Con.	125.68
"	"	.....	3.74
6- 1-28	3-31-29	Sale of Oil. No. Gas. Gulf (Written in red): ("This lease abandoned")	72.26
6- 1-28	5-31-29	Sale of Oil. No Gas. Humble Chaney	104.74
6- 1-28	5-31-29	Sale of Oil. Prairie Mid Con.	115.30
"	"	Sale of Gas	3.74
6- 1-29	7-31-29	Sale of Oil. No Gas. Humble Chaney (Written in red): ("Lease abandoned here")	4.15
6- 1-29	5-31-30	Sale of oil. Prairie Mid Con.	185.91
"	"	Sale of Gas	3.74
6- 1-30	5-31-32	Sale of Oil. Prairie Mid Cont.	251.—
"	"	Sale of Gas	7.48
6- 1-32	8-31-34	Sale of Oil. Prairie Mid Cont.	371.46
"	"	Sale of Gas	3.74
9- 1-34	9-30-36	Sale of Oil. No Gas. Prairie Mid Cont.	403.80
		Total to Date	8,591.76

Repudiated."

805 The Witness:

That payment of $403.80 covered the period of time from 9-1-31, to 9-3-36. The proceeds accruing to that lease were tied up during that period and released at that time; I did not receive statements from the producing oil companies during that period showing the amounts accruing to them in suspense, we could ascertain that any time we wanted to. I believe the Bunger pool came in 1921 or 1922. I am generally familiar with the gradual decline of an oil well after it reaches a settled

production. During that two year period covered by that last item, there would be a sort of a gradual lessening of production and receipt from it. I think there were originally four leases, forty acre leases in the Grimshaw. We made a notation on this, that in 1929 the Gulf's lease on the Bunger was abandoned and in 1929 also the Humble's lease was abandoned.

I first learned that part of the interest acquired by G. W. Peckham as an individual, had been conveyed to F. O. Harrell some time this year, I don't recall just when I begun to dig into it, before the pleading in this case, I think we went down to Young County along in May. At the time of the filing of this cross action, I considered it to the best interest of the trust to convey this interest, upon being repaid the amount that the trust company paid G. W. Peckham, and interest thereon, after crediting such amount so determined, with such oil runs as have been received by the company. I now offer to reconvey that item and tender it into Court, and reconvey it to whomsoever the Court might say.

806 The mineral deed from G. W. Peckham to Wichita Royalty Company, dated April 24, 1924, and conveying 1/64th interest in lots 13, 14 and 27, of the American Tribune New Colony Company subdivision is known as property No. 75, in the records of the Royalty Company.

Mr. Rogers:

We offer it in evidence.

(Marked "Defendant's Exhibit 39" as follows:)

DEFENDANT'S EXHIBIT 39.

G. W. Peckham to Wichita Royalty Company.

Consideration $1.00 and other valuable considerations.

Conveying an undivided 1/64th interest in and to all of the oil, gas and other mineral in and under and that

may be produced from the following described land situated in Archer County, Texas, to-wit:

Being lots Nos. 13 and 14, in block 27, of the American Tribune New Colony Company's subdivision, as shown by the map or plat of record in the Deed Records of Archer County, Texas.

Documentary stamps, $21.30.

Dated April 22, 1924.

Duly acknowledged by G. W. Peckham before E. E. Scannell, notary public in and for Wichita County, Texas, April 22, 1924.

Filed for record April 25, 1924, at 8:00 o'clock A. M. by the county clerk of Archer County, Texas.

807 The Witness:

I have the checks that were issued in payment of that, and I have the voucher records behind each voucher check; the first check, voucher check is No. 154, dated February 2, 1924. Pay to the order of B. L. Fain for $12,000.00, and the voucher record shows that it was given to the purchase of a royalty interest in the Tonkawa and Creek Counties, Oklahoma, $12,000.00. There is a notation that the money was not applied—we did not receive—that the money was not applied to the purchase of the Oklahoma property, but it says, "See letter from G. W. Peckham to Wichita Royalty Company, dated March 17, 1924. This money to apply on Wilson Royalty instead of above." That last phrase was written subsequent to the original writing of the voucher and the voucher notation, under the instruction and direction of G. W. Peckham. That notation was made shortly after the voucher was issued. We never got any of those Oklahoma properties that Mr. Peckham first told me to charge the check against. I imagine it was a few days later that Mr. Peckham told me to enter that as a payment on this particular royalty No. 75. The number of the check is 154, payable to B. L. Fain, deposited to the credit of G. W. Peckham on the 30th day of February, and the

City National Bank. The notation refers to a letter signed by Mr. G. W. Peckham, I think I have it, I will undertake to get it and present it.

The next check is No. 185, dated March 17, 1924, payable to the order of G. W. Peckham for $9,250.00. Voucher notation shows to cover difference in purchase
808 price of Tonkawa-Deer Royalties, check No. 164, purchase price $27,500.00 for 1/8th royalty on Wilson 80 acres, block 27, Ray, Massie, Featherstone, Mayer, Staniforth leases; total cash payment $21,250.00. To be paid from oil, $6,250.00. Those were the two checks issued. The $6,250.00 was paid out of oil. I will explain that this way; the total purchase price of the interest was $27,500.00 and there was a certain amount of it, $6,250.00, that would accrue each month in oil runs, and when that $6,250.00 was accrued, then we would get all the money that the lease made, as far as our interest appeared, until $6,250.00 was paid, that much was held up. I presume it was paid to George Peckham, as I understand, when this Wilson lease was bought they paid so much cash for it and so much out of oil and when Peckhams resold it they resold it the same way. They divided the total 1/8 interest that they bought, and they held that oil payment and it just went on back to the Wilson estate until that amount was paid, whatever it was, and the proportion of our interest was $6,250.00. The Royalty Company does not still own this property, it was sold to the Petroleum Oil Corporation November 25, 1927, for $5,700.00. That property was sold under an escrow contract deposited with the plaintiff bank and which has heretofore been identified in evidence.

During the last few months I have examined carefully the books and records of the Wichita Royalty Company and photostatic copies and other copies fur-
809 nished me by the plaintiff bank, of the respective accounts of the various parties to the suit, and all checks and bank statements of G. W. Peckham—I have attempted to find out everything I could about it. The records do reflect the payment of certain items, and the purchase price of this particular royalty No. 75; our

information is that on December 5, 1927, G. W. Peckham received $2,400.00 from the escrow account and that this money was deposited to the account of G. W. Peckham on December 5, 1927; on January 9, 1928, G. W. Peckham received $1,200.00 from the escrow account and the same was deposited to the account of G. W. Peckham received $1,200.00 from the escrow account and the same was deposited to the account of G. W. Peckham on January 9, 1928; on January 25, 1928, G. W. Peckham received $1,224.00 from the escrow account, being $1,200.00 principal and $24.00 interest, and same was deposited to the account of G. W. Peckham on January 25, 1928. On February 29, 1928, G. W. Peckham received $1,224.00 from the escrow account, being $1,200.00 principal and $24.00 interest, and the same was deposited to George Peckham's account on February 29, 1928. No part of the proceeds of that sale was deposited to the account of Wichita Royalty Company. I have here the book entry I made under the direction of Mr. Peckham, with respect to that sale; the journal, as to it, the entry with the $6,250.00 payment out of oil, shows the total consideration of $27,500.00, which was the cost of the property, journal entry No. 17, dated March 31, 1924, reading,
810 "Producing royalties owned, No. 75, $6,250.00 on the debits, and notes payable royalty $6,250.00 credit." And the explanation, "The above amount represents the money to be paid out of oil runs of the Luke-Wilson royalties, covers Blocks 13 and 14, Section 27, A. T. N. C. lands, Archer County, Texas; the full purchase price of this royalty, 1/8th of 1/8th fee, was $27,500.00, of which $21,250.00 cash was paid. The check No. 154, $12,000.00 and 185, for $9,250.00. And the ledger entry, February 2, 1924, No. 75, folio 154, referring to the voucher number of the check, $12,000.00; March 17, No. 75, check No. 185, $9,250.00; March 31, No. 75, journal entry No. 17, $6,250.00—total $27,500.00. I have before me the original ledger reflecting the ledger entry of the sale of property No. 75. I have tried to find the original journal entry behind that ledger entry and have not been able

to find it, I think I can produce it. The books and records of the Wichita Royalty Company have been moved several times. The ledger shows we made journal entry No. 24, May 1, 1928, $5,700.00, debit and two notes receivable. I will read the entry on the ledger, under notes receivable, May 1, 1928, on the debit side, for J. F. Wilson royalty, interest J. E. 24, of $5,700.00. That property had been sold in November the year before, and I had not been instructed theretofore to make book entry on it. The item of $5,700.00 under notes receivable for the sale of property No. 57, was made, along with another, at the end of the year, May 31, 1928, J. E. 35, $11,400.00 on the credit side. The other $5,700.00 item entered May
811 1, 1928, for Hattie Vaughan, Royalty Interest J. E. 25, $5,700.00, total $11,400.00. That Hattie Vaughan Royalty was the one that was sold in payment of cashier's check of $6,000.00 and was issued and deposited to the account of G. W. Peckham as heretofore identified in the testimony. The $11,400.00 item, I was instructed by George Peckham at the close of that year, to charge those two interests to notes payable account at the City National Bank, and did so charge them. On June 1, Journal entry No. 18, $11,400.00, notes payable account City National Bank. That journal entry is likewise in the book that I will undertake to produce.

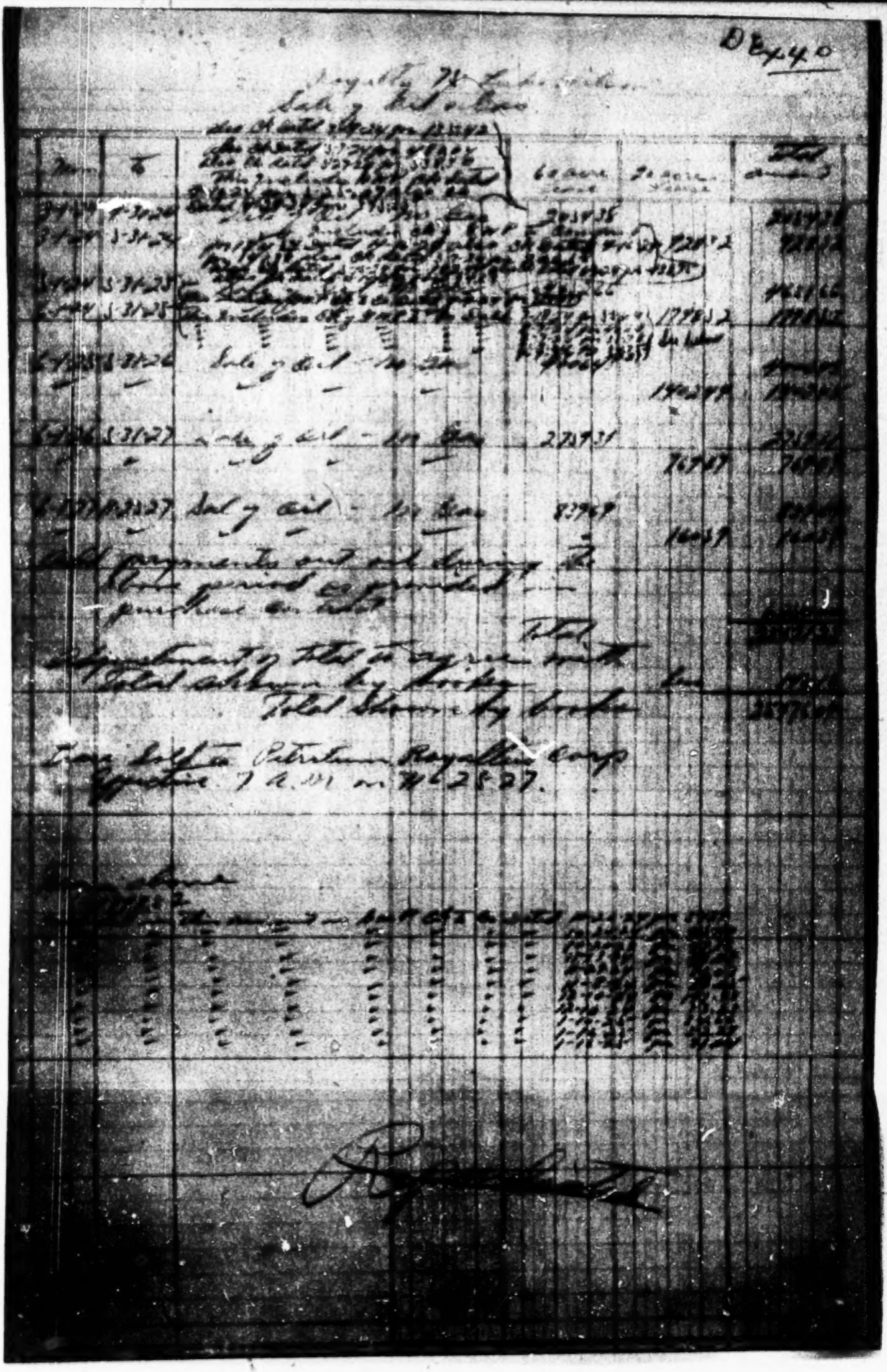
I have likewise examined the liability record of the Wichita Royalty Company with the City National Bank as of that time and on that date, and the Wichita Royalty Company was not given credit upon its liability records to the bank.

I have the production records before me, and the matter which is now offered in evidence is a condensed statement of the proceeds accruing from that royalty No. 75, and received by the Wichita Royalty Company at the time, and in the amount therein shown.

Mr. Rogers:

We offer it in evidence.

(Marked "Defendant's Exhibit No. 40" as follows:)



813 The Witness:

The exhibit 40, totals $25,476.04, and is the royalty that there was an oil payment due on, it includes the oil payment; it figures into the $6,250.00 that is figured in the $25,000.00. I don't know just exactly what it will total, but the $25,476.04 includes $6,250.00 of oil payments; therefore the royalty company actually got $6,250.00 less than that figure shows, into its treasury, approximately $19,000.00.

When this litigation originally arose in 1930, or 1931, and the cross action was filed, the royalty company no longer owned that property and had no property on hand to tender back. I now consider it is to the best interest of the stockholders of the trust whom I represent, to repudiate that transaction, and thus, in an accounting as against those liable therefor, that the trust be repaid the original amount that has been expended upon it, with interest thereon, and credited, of course, with the proceeds from the sale of the oil which I have received from the property. I make such offer and tender now.

I have here before me the books and records and papers of the Wichita Royalty Company, in respect to property No. 76. I do not have the deed. It was acquired from G. W. Peckham. It was a leasehold estate under an oil and gas lease. Our books and records do not reflect that we ever got legal title to that property. It is my recollection that Mr. Peckham, either in his own name, or that of another, had title to that property, and the royalty company received some oil runs accruing to it. With

814 respect to the oil companies paying off its purchase, as to the checks that were issued, check No. 237, July 2, 1924, for $11,000.00. The original voucher record shows a purchase of interest of lots 9 and 10, block 41, J. H. White lands, Archer County, Texas, total cost $21,000.00, this payment $11,000.00. The last payment of $11,000.00 says "Pay to the order of Security National Bank." The next item is check No. 246, dated July 24, in the amount of $10,000.00, the voucher notation is, to purchase the interest of lots 9 and 10, block 41, J. H. White

lands in Archer County, Texas. That was sold to Fain-McGehee. The records do not show, except that it was sold. We have a memorandum here that it was sold to Fain and McGehee. It shows we got $1,796.86 for it, and an oil payment of $538.04. We paid $21,000.00 for it, and got back $2,334.90; and the interest was no longer owned by either G. W. Peckham or Wichita Royalty Company at the time of Mr. Peckham's death. During the time of the original entries, showing the payment of $21,000.00 and the time of his re-sale, the Wichita Royalty Company received certain moneys as to proceeds of minerals accruing to that interest. It shows we got $2,501.51, but I don't have the date that the money was actually received, the approximate date is 10-22-24—that is the date it was entered on our records. It was from the original run, up to that date. I don't know who paid those oil runs, off-hand. We received some money from the sale, $424.39, covering the period from 8-1-24 to 10-21-24, we received a total payment of $2,-
815 925.90. I, as trustee, did not have any of that property left when I became trustee. I think it is to the best interest of the stockholders whom I represent to ask that in an accounting between the parties there should be charged against those liable therefor the amount of money that the royalty company paid for that interest, with interest credited, of course, with the sale price later received, of $2,334.90, and further credited with the $2,925.90 that we received as the sale of oil.

I next have the file on property No. 79. I have here royalty company check No. 373, the voucher notation shows, dated May 25, 1925, pay to the order of G. W. Peckham, $2,500.00; in the upper left, to purchase 1/16th of the royalty in the Routan land, 117 acres in Archer County, Texas. $2,500.00. The proceeds of that check were deposited to the credit of G. W. Peckham on May 5, 1925. The deed was not dated until June 30, 1925, and filed for record November 5, 1925, at 8:20 A. M. The deed to the property described in our voucher was executed by J. H. Massie and George B. Ray, runs to

the Wichita Royalty Company, who is the grantee. That property produced them all. I have the record of such production and the receipt thereof by the Wichita Royalty Company.

Mr. Rogers:
We offer the oil runs in evidence.

(Marked "Defendant's Exhibit No. 41" as follows:)

816 DEFENDANTS' EXHIBIT No. 41.

"Royalty 79.

Routon.

Purchased from G. H. P. but assignment came from Ray & Massie, dated 6-30-25.

Co. Paid for Roy. 79.

5-5-25		Co. Ck. No. 373 favor G. W. P. Paid 5-5-25 indorsed G. W. Peckham and deposited to Cr. of G. W. P. on 5-5-25	2,500.00

Sale of Oil from Roy. 79:

7-1-25	3-31-26	Sale of Oil	203.45
4-1-26	4-30-27	Sale of Oil	140.70
5-1-27	5-31-28	Sale of Oil	36.86
"	"	Lease Rental	1.06
6-1-28	5-31-29	Sale of Oil	21.25
6-1-29	5-31-30	Sale of Oil	13.11
6-1-30	11-30-30	Sale of Oil	2.80
		Total shown by books	$419.23

Probably abandoned."

817 The Witness:

The last money received from oil produced on that property was $2.80, from June 1, 1930, to November 30, 1930, from which time nothing has been received, and I think the property was then abandoned, and is of no market value. I consider it to the best interest of the stockholders to offer to reconvey that property upon being paid the original purchase price which Wichita Royalty Company paid G. W. Peckham for it, with interest thereon, upon such amount being credited with such oil runs as we have received. I make such offer and tender.

I next have here property No. 80, generally known as the Anderson land in Archer County, Texas, which property is evidenced by two deeds, each executed by G. W. Peckham, one on the first and the other on the 20th of July, 1925. One filed September 23, and the other filed September 28, 1925. The Wichita Royalty Company being the grantee in each. The checks issued in payment of that interest are 385, dated June 24, 1925, for $6,000.00 to G. W. Peckham and deposited to his account. The voucher notation shows 1/16th royalty on block 21, east twenty-five acres, north fifty acres of west one hundred acres, block 19; east sixty acres of west one hundred and sixty acres, block 19; south sixty acres of west eighty acres, block 22, J. L. Anderson south pasture sub-division, Archer County, Texas. 1/8th royalty on west half, southwest quarter, northwest quarter of section 2, J. Pointevant Survey, Young County, Texas; 217 acres in J. L. Anderson subdivision known as Holiday District; twenty acres in the Pointevant survey, Young County, Texas.

818 That voucher notation is in original typewriting.

That indicates that the voucher notation was written at a time subsequent to the original issuance of the check.

I have here check 387, dated June 29, 1925, pay to the order of G. W. Peckham for $5,000.00, one sixteenth of royalty on all of block 21, in the east twenty-five acres of the north fifty acres of the west one hundred acres,

block 19; east sixty acres, west one hundred and sixty acres of block 19; and the south sixty acres of the west eighty acres, block 22, J. L. Anderson subdivision, Archer Cou nty, Texas; one eighth of royalty in west one-half of the southwest quarter of the northwest quarter, section 2, J. Pointevant Survey, Young County, Texas. That voucher notation is in carbon. The proceeds of that check were deposited to the credit of G. W. Peckham on June 29, 1925, in the City National Bank. Property No. 80 did not make any oil during the time it was owned. I will let you see the records of what it produced.

Mr. Rogers:

We offer the statement of oil runs in evi lence.

(Marked "Defendant's Exhibit 42" as follows:)

DEFENDANTS' EXHIBIT No. 42.

"Royalty 80.

Sale of Oil & Gas.

From	To					Amount
7-18-25	5-31-26	Sale of Oil	No Gas.	Norday—Humble		832.43
7- 1-25	5-31-26	" "	" "	Perkins—Texhoma		2,041.48
7- 1-25	5-31-26	" "	" "	Gulf—Empire		661.49
2- 1-26	4-30-26	" "	" "	M. & F.—Texas		30.22
6- 1-26	5-31-27	" "	" "	Humble		508.43
6- 1-26	5-31-27	" "	" "	Perkins—Cont.		1,809.51
6- 1-26	5-31-27	" "	" "	Gulf—Empire		303.58
6- 1-26	5-31-27	" "	" "	Texas M. & F.		17.26
9- 1-25	5-31-27	" "	" "	Humble—Prairie		48.63
6- 1-27	5-31-28	" "	" "	Humble		169.43
6- 1-27	5-31-28	" "	" "	Perkins—Cont.		702.98
6- 1-27	5-31-28	" "	" "	Gulf—Empire		119.70
6- 1-27	3-31-28	" "	" "	Texas Co.—F. & M.		7.57
6- 1-27	5-31-28	" "	" "	Humble—Prairie		13.75
6- 1-28	5-31-29	" "	" "	Humble		99.67
6- 1-28	5-31-29	" "	" "	Cont.—Perkins		561.90

From	To						Amount
6- 1-28	5-31-29	"	"	"	"	Gulf Empire	94.21
4- 1-28	12-31-28	"	"	"	"	Texas Co.—F. & M.	6.69
6- 1-28	5-31-29	"	"	"	"	Humble—Prairie	11.76
6- 1-29	5-31-30	"	"	"	"	Humble	59.77
6- 1-29	5-31-30	"	"	"	"	Cont.—Perkins	715.51
6- 1-29	5-31-30	"	"	"	"	Gulf—Empire	62.25
2- 2-29	5-31-30	"	"	"	"	Texas—F. & M.	15.61
6- 1-29	5-31-30	"	"	"	"	Humble—Prairie	9.10
6- 1-30	7-31-31	"	"	"	"	Humble—Perkins	27.79
6- 1-30	12-31-31	"	"	"	"	Humble—Perkins	400.55
6- 1-30	1-31-32	"	"	"	"	Gulf Perkins	95.02
6- 1-30	12-31-32	"	"	"	"	Cont.—Perkins	25.45
6- 1-30	9-30-31	"	"	"	"	Humble—Prairie	7.41
1- 1-32	3-31-36	"	"	"	"	Cont.—Perkins	706.04
1- 1-32	3-31-36	"	"	"	"	Cont.—Perkins	9.41
						Total Sale of Oil shown by books	10,174.51"

The Witness:

In reading off the description of the property I have included several in my notation, but all of such properties are generally known and carried upon our books as property No. 80. The last payment received by the Royalty Company upon that, from the lease, was March 31, 1936, $715.45, the runs accrued from January 1, 1932, to March 31, 1936. During that period of time those runs had been suspended due to matters growing out of this litigation, and were released under a judgment of the District Court of this county in garnishment. I consider it to the best interest of the stockholders to offer to reconvey this property upon being repaid the original payment made for it, with interest thereon, after crediting the sum with the payments received, and I make such offer and tender.

Next is property No. 97, four checks issued in payment of that; they are, No. 598, dated April 11, 1927,
821 pay to the order of B. L. Fain, $500.00; that is voucher notation, purchase of oil runs to apply on purchase of $4,200.00 in oil runs due from Roxana on the Milner, Wilbarger County, purchase price $3,000.00. The original check was indorsed by B. L. Fain, that is his signature. For a number of years, I was an employee of the company of which B. L. Fain was trustee, and am familiar with his handwriting. I do not know to whom the proceeds of that check were deposited. The next check is No. 602, dated April 23, 1927, pay to the order of B. L. Fain, $1,000.00, voucher notation was, purchase of oil runs to apply on purchase of $4,200.00 in oil runs due from Roxana Petroleum Company on C. J. Milner, Wilbarger County, Texas, purchase price $3,000.00. It is indorsed B. L. Fain, and under it the indorsement of G. W. Peckham. That is not the signature of B. L. Fain, it is the signature of G. W. Peckham. The proceeds of that check were deposited to the credit of G. W. Peckham on April 23, 1927. The next check is No. 607, dated May 6, 1927, pay to the order of B. L. Fain, $500.00; voucher notation, purchase oil runs to apply on purchase of $4,-200.00 in oil runs, due from Roxana Petroleum Corpora-

tion, Milner lands, Wilbarger County, purchase price $3,000.00; indorsement by B. L. Fain and under it G. W. Peckham; that is not the signature of B. L. Fain, it is the original signature of G. W. Peckham. The proceeds were deposited to the account of G. W. Peckham May 6, 1927, in the plaintiff bank. The next is check No. 610, 822 May 16, 1927, pay to the order of B. L. Fain, $1,000.00, voucher reading, purchase oil runs to apply on purchase of $4,200.00 in oil runs, due from Roxana Petroleum Corporation by J. T. Milner lands, Wilbarger County, Texas, purchase price $3,000.00; indorsed by B. L. Fain and under it G. W. Peckham. That is not the signature of B. L. Fain, it is the signature of G. W. Peckham. It looks like the signature of B. L. Fain is written by G. W. Peckham. The proceeds of that check were deposited to the credit of G. W. Peckham on May 16, 1927. The Wichita Royalty Company received the money as the proceeds of oil runs from that property and I have the record of such receipts.

Mr. Rogers:
We offer it in evidence.

(Marked "Defendant's Exhibit 43" as follows:)

DEFENDANT'S EXHIBIT 43.

"Roy. 97. Milner Oil Payments.

4-15-27 Assigned by B. L. Fain to Co.
Assignment attached.
Sale of Oil & Gas.

3- 1-27	5-15-27	Sale of Oil	193.64
5-16-27	5-30-27	Sale of Oil	15.03
6- 1-27	5-31-28	Sale of Oil	151.46
6- 1-28	11-15-28	Sale of Oil	37.72
		Total	397.85"

823 The Witness:

Those oil runs totaled $397.85, the last payment received in 1928. I think that property had been abandoned prior to the death of G. W. Peckham. Our interest was an oil payment, under an oil and gas lease.

Mr. Rogers:

We offer it in evidence.

(Marked "DEFENDANT'S EXHIBIT 44" as follows:)

Assignment from B. L. Fain to Wichita Royalty Company for a recited consideration of $3,000.00, transferring 20/75ths of a $17,500.00 oil payment, under an oil and gas lease executed by T. J. Milner and Wife. Payable out of one-third of the first oil produced until $4,200.00 is paid.

Dated .... day of ....., 19...

Filed for record May 20, 1927.

Acknowledged April 15, 1927.

824 The Witness:

That property has not had any market value since I became trustee. I consider it to the best interest of the stockholders to offer to reconvey such, if any interest, the Wichita Royalty Company may have in and to that property, upon being repaid the amount we have paid for it, with interest credited, of course, with the payments that we have received thereon, and I make such tender and offer.

I have here voucher check and its notation, No. 317, for Royalty No. 78, Curtis Lane; voucher notation is to purchase 1/2 of 1/16th royalty in one hundred and twenty-five acres known as Block 46, of the Meade L & M pasture subdivision of the D. G. Thomas property, Survey Abstract No. 458 Archer County, Texas. The check is pay-

able to G. W. Peckham, deposited to his account December 23, 1924, with the City National Bank. As to the oil runs, the amounts received, from January 16, 1925, to May 31, 1925, we received $23.98; and from June 1, 1925 to August 31, 1926, we received $15.05; on November 25, 1926, we received a check for $1.22 as final run. That property was abandoned, and since that time it has had no value. I think it is to the best interest of the stockholders that I ask that the consideration paid therefor, with interest thereon, credited with those small amounts received therefrom, be demanded, with a credit thereon, of such oil runs and upon such, convey back the property so received; I make such tender and offer to do equity.

825 The east thirty-three acres of a seventy-one acre tract is a Milligan Survey in Callahan County, on the books of the royalty company, No. 81. Check No. 427, the voucher notation: Property No. 81, to purchase one-fourth of the royalty on the thirty-one acres in the seventy-one acres of land out of the Milligan survey, Callahan County, Texas, interest, $2,500.00. The voucher check was payable to the plaintiff's Bank's order, deposited to the credit of G. W. Peckham, October 8, 1925. The deed itself heretofore identified and offered in evidence as Defendant's Exhibit No. 18. The voucher notation with reference to property No. 81, to purchase of one-quarter of the royalty of the east thirty acres of the seventy-one acre tract out of the Milligan Survey, Callahan County, Texas, $2,500.00; the check is for $5,500.00; the balance of the voucher notation is the description of property No. 82, one $1,500.00 and additional property not described for $1,500.00. All of the voucher notation is in the original typewriting. The property did not produce any oil, we never got any money out of it or sold any interest, or otherwise disposed of it. Upon the filing of the cross action in 1931, I then thought, and now think, that it is to the best interest of the stockholders that I offer to convey that upon being paid back that which was paid for it, and did tender it back at that time, and do now.

The property known as the Porter Ranch is No. 83, I will give the vouchers and the checks on that; check No. 461, dated December 28, 1925, pay to the order of City National Bank, $1,250.00; the voucher notation reads, "Producing royalties." Subsequent notation, that it is No. 83, M. L. Porter Ranch. The last notation is in pencil, that was probably made as soon as we learned that the money actually—the property the money actually went to. The check was originally issued and delivered to Mr. Peckham, the information as to its purchase was producing royalties, and it was so written, and no description of such producing royalty was given that I might identify. It is dated December 28, 1925. The next payment on the Porter Ranch was check No. 554, dated December 2, 1926, and the voucher reads, "Notes payable, land in fee, to apply on balance due on M. L. Porter, one thousand, seventy acre purchase, $920.82, interest expense on above note, $221.00." That voucher notation was a part of a larger check. The voucher and check No. 554, was in the amount of $1,500.00, payable to the City National Bank, deposited to the credit of G. W. Peckham. The next is check No. 670, dated December 20, 1927, pay to the order of G. W. Peckham, $147.33, voucher notation reads, "Interest expense on Porter property from December 1, 1926, to December 1, 1927." Deposited to the credit of G. W. Peckham. The next is check No. 778, January 14, 1929, pay to the order of G. W. Peckham, $21.63, voucher notation reading, "Taxes paid on Porter Ranch, our proportion." The check was cashed by G. W. Peckham. Next is check No. 857, dated November 29, 1929, payable to the order of Knight & Hines, $84.41. To our part interest and taxes on Porter Ranch, Archer County, Texas. The next is check No. 970, dated December 17, 1930, W. T. Knight, attorney-in-fact, $102.83; the voucher notation reading, "To our proportion of assessment for 1930, on M. L. Porter Ranch, per statement attached." The ink notation on it, "Interest paid." That was also after Mr. Peckham's death. Mr. Peckham never executed an assignment

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or conveyance or any memorandum in writing signed by him of any kind or character, conveying the Porter Ranch or any interest in it, evidencing that he held it in trust for the Wichita Royalty Company. During the period that Mr. Peckham and I were negotiating in the fall of 1929, as I have heretofore testified, and not having any deed to that property, I undertook to and did institute a suit in Archer County to establish that title in the Wichita Royalty Company. It developed that none of the Wichita Royalty Company's money went into the original purchase of the property by G. W. Peckham, but on the contrary, G. W. Peckham bought the interest in the Porter Ranch with his own funds. Mr. Peckham died without a will, he left at least two minors. Upon discovering those facts and such other facts as I might have discovered, I abandoned and dismissed that suit, and filed upon it and re-tender the property and sue for the amount paid therefor, in the original cross action that I filed. I still consider it to the trust's interest to repudiate the transaction and tender it back, and I offer to reconvey it upon the restoration of the amount paid therefor, with interest thereon.

We show they got some lease rentals on the
628 Porter Ranch, check from G. W. Peckham, dated 2-27-26, in the amount of $111.67, and they also received lease rentals of $115.88, on 7-29-27. I also tender back and offer to do such equity as is required with respect to repudiating each and all transactions which G. W. Peckham as an individual had with himself as trustee with respect to all transactions connected with, involved in, or growing out of either the Marlborough partnership, or its corporate successor, the Texas Investment Company.

The next is property No. 95, lot 10, North Anderson Ranch, I have here voucher No. 550, dated November 20, 1926, check payable to the City National Bank in the amount of $7,500.00 and the voucher reads, "Royalties owned, property No. 97, being 3/16ths interest in the leasehold estate, eighty acres east half of lot 10, north Anderson Ranch, S. P. Survey, Archer County, Texas,

$5,000.00. That is check No. 550. I never got a deed or letter, or any memorandum in writing or any other evidence of title signed by the payee in the check, City National Bank, or G. W. Peckham, or anybody else for that leasehold estate. It does not show upon the voucher notation to be a mineral interest, it is a leasehold. He did not give any description of any leasehold estate that he was preparing to receive that money for, so that I could tell the lessor the date of the lease, expiration of it, or the drilling requirements, the rental paying period, or any terms or provisions of that lease. The royalty company never received anything of any kind for that money. The $7,500.00 check was deposited to
829 the credit of G. W. Peckham on November 20, 1926, in the City National Bank. I have tendered back and now offer to disclaim or re-convey, or do any other matter or thing that equity should require to repudiate that transaction and to recover against those liable therefor, the amount that I paid for that interest that the trust did not acquire.

I have here also the property known as No. 96, Southwest sixty acres of the Polk land in Archer County; check No. 550, dated November 20, 1926, made payable to the City National Bank in the sum of $7,500.00; on the voucher it reads, "Royalties owned property No. 96, to apply on purchase of one-fourth of royalty on the southwest sixty acres of polk lands, Abstract No. 717 of William Polk preemption survey, Archer County, Texas; also one-fourth of the seven-eighths leasehold estate on the west forty acres of the same land, $2,500.00." That money was deposited to the account of G. W. Peckham in the City National Bank. The voucher also recites that it is the purchase of a 3/16th interest in the east half of oil and gas leasehold estate on eighty acres out of the east half of lot 10, North Anderson Ranch. The check was given in the amount of $7,500.00—that check is No. 550, and it purported to purchase two properties, first, royalties owned, property No. 95, 3/16ths interest in the leasehold estate, eighty acres, east half of lot 10, North Ander-

son Ranch, S. P. Survey No. ...., Archer Coun-
830 ty, Texas, $5000.00. I have already testified about that property and it is known as the Anderson property—North Anderson Ranch. The balance of the voucher notation which I read a moment ago, relates to property No. 96. The next payment on property No. 96, is check No. 583, dated March 1, 1927, payable to the City National Bank in the amount of $301.82. The voucher reads, "Royalties on property No. 96, last payment on purchase of 1/4th of royalty on the southwest sixty acres of the E. Polk land, abstract No. 717 of the William Polk preemption Survey, Archer County, Texas; also one-fourth of the 7/8ths leasehold estate on the west forty acres of the same land. This payment, together with the payments on checks Nos. 550, and 554, make a total cost of $3,000.00 for the above interest—that is all the payment on the land. The next check is No. 554, dated December 2, 1926, payable to the City National Bank for $1,500.00; on the voucher reading, along with other property purchased in the same check, royalties owned, Property No. 96, to apply on purchase of 1/4th of royalty on the southwest sixty acres of the E. Polk lands, Abstract No. 717, William Polk preemption Survey, Archer County, Texas; also one-quarter of the 7/8ths leasehold estate on the west forty acres of the same land. The amount is $193.18. I do not have the conveyances of that property to the Wichita Royalty Company, none was ever executed. The Wichita Royalty Company never got a letter or a memorandum in writing or any other evidence of the royalty company's ownership of that described inter-
est upon its records. The royalty company has
831 never received any proceeds of production produced thereon, or any rents or revenue therefrom, or any other kind or character of credit upon its outlay for its supposed purchase. I think it is to the trust's best interest to repudiate that transaction, if any there was, and tender back and offer to re-convey, if required, if there be anything to reconvey and ask for a restoration of the amount paid Mr. Peckham therefor, and I offered so to do equity.

The royalty property in Ellis County, Oklahoma is No. 93, the voucher description of it; on check No. 554, dated December 2, 1926, check payable to the City National Bank in the amount of $1,500.00; this property was conveyed along with others, and the voucher notation reads, "Royalties owned, property No. 93," being half of the royalty on the south half of the northeast quarter of section 35, township 19 north, range 21 west, Ellis County, Oklahoma; also 7/8ths oil and gas lease on the same land, amount $160.00. That is the assignment of that oil and gas lease from G. W. Peckham to the Wichita Royalty Company. That property never produced. I will state that I was acquainted with various transactions which various of my associates had in the purchase and sale of oil and gas properties, mineral interest, and other oil properties in the vicinity of Wichita Falls, and in Southern Oklahoma and in Ellis County, Oklahoma, and generally in this area, of the mid-continent field. During that period of time. However, I would not want to undertake to say that I am an expert on values. In
832 this particular instance, that is the property we are talking about, it is my understanding that this was a wildcat well they were drilling somewhere in that vicinity. I do not think it has any value now, nor has it had in the last few years. I think it is to the best interest of the stockholders that they repudiate and tender back, and I now do so.

I will now get trust check and trust voucher No. 557, in Hartley County; voucher checks, the notation reads, "Dated December 10, 1926," payable to the City National Bank in the amount of $1,920.00; and on the voucher was a notation written, royalties owned in full payment of one-half royalty on 640 acres in Hartley County, Texas, $1,920.00. That is property No. 94. I do not know what disposition the payee bank made of that check, except what information we have on it, which says, "Draft from Texas State Bank, Houston, cage 16." Mr. Carson testified to that the other day. I consider that it is to the trust's best interest to repudiate that transaction and ask

for a restoration of the return of the payments therefor and upon which I would be willing to reconvey the property.

Heretofore I have identified certain checks with the voucher notations, which showed that they were in payment of a salary, as Mr. Peckham caused the books and records of the trust to show; there are additions to those to which I have testified, other items which he did not deposit to his account with the plaintiff bank, but which he cashed at the window. Those salary checks
833 I have heretofore testified about was deposited to his account with the plaintiff bank. I will give a list of the checks and identify them by number, that we now hand you. Check No. 1,195, dated January 16, 1923, $500.00, pay to the order of G. W. Peckham. The voucher notation shows, "To cover traveling expense, Kansas City, Chicago, New York." Indorsed G. W. Peckham by E. E. Scannell. The next one is No. 1,272. I got the money on the check just mentioned and gave it to him at the train, when he got back, I made an itemized account of the expenses. I have mentioned check No. 1,252, dated March 20, 1923, payable to the order of City National Bank for $500.00, and the voucher reads, "Traveling Expenses for George W. Peckham trustee, for Wichita Royalty Company." The next one is No. 1,339, dated June 1, 1923, pay to the order of G. W. Peckham, $500.00, and the voucher reads, "Executive salary for the month of May." The next one, check No. 13, dated July 3, issued to George W. Peckham, $500.00, the voucher reads, "Executive salary for the month of June, 1923." Check No. 115, dated November 30, 1923, issued to George W. Peckham in the amount of $500.00 and the voucher reads, "Salaries, executives, for the month of November, 1923." Check No. 180, dated March 1, 1924, issued to George W. Peckham, the voucher reads, "To reimbursement on insurance premiums, Studebaker touring car, amount exactly one-half of premium, the amount of $30.95." Check No. 221, May 31, 1924, issued to G. W. Peckham for $500.00, and says, "Salaries, Executives" on the

834 voucher. Check No. 261, dated September 3, 1924, issued to G. W. Peckham, $500.00, Salaries Executive, in pencil notation it says, "August." Check No. 529, dated August 20, 1926, issued to G. W. Peckham for $400.00, voucher reading, "Salaries executive for the month of August, 1936." Check No. 643, dated September 30, 1927, issued to G. W. Peckham in the amount of $400.00, and the voucher reads, "Salaries executives for the month of September, 1927." Check No. 644, dated October 1, 1927, voucher reading, "Information on eighty acres, Section 35, Ellis County, Oklahoma, $20.00; on Section 54, league 186, Hartley County, Texas, $40.00; telephone call to Breckenridge Texas on Hartley County title, work on title, done by DeMontel and Sanford, $2.85, total $62.85. Check No. 398, dated July 20, 1925, to G. W. Peckham for $10.00, and it says on voucher, "Revenue stamps on deed for interest in Norday and Vernon royalties, $10.00." Check No. 438, dated November 6, 1925, issued to G. W. Peckham in the amount of $4.75; on the voucher, "Revenue stamps on royalty deed to property No. 81, $2.50, miscellaneous expense, exchange on draft on property No. 81, $2.25."

The books and records I have examined show those checks to have been cashed, rather than deposited. The total is approximately $4,400.00.

I have added up the check that have heretofore been identified in evidence, that was drawn upon and charged to the Wichita Royalty Company's deposit account with the plaintiff bank, and the aggregate total of sums so charged against it and deposited to the account of
835 G. W. Peckham in the bank, is $253,418.41.

I have likewise, during the period, examined the payments that were made by the plaintiff bank from the account to which these trust funds had been transferred, that were applied upon G. W. Peckham's personal obligation to the plaintiff bank, and have totaled the payment, which is $250,078.76 That is the amount I figured that G. W. Peckham paid out of his personal account with the plaintiff bank, to which certain funds had been

transferred from the Royalty Company's account with the bank and which $250,078.76 payments were credited by the plaintiff bank upon G. W. Peckham's personal liability to that bank, as shown by the liability records of the bank, and the deposit account of the bank. I have trust check No. 169, and the voucher notation therefor, the check is dated February 29, 1924, payable to the order of G. W. Peckham, $1,200.00; the voucher notation reads, "To purchase of 1924 model Special Six Studebaker, $1,200.00; deposited to the account of G. W. Peckham, February 29, 1924, in the City National Bank." I remember that automobile, and prior thereto it had been bought by G. W. Peckham in his own name. It was a used car. $1,200.00 is below the then list price of that character of automobile. I do not know whether it was ever transferred of record in the name of the Wichita Royalty Company or not. It was thereafter sold for $555.00 on September 30, 1926. The company got that money, and did not have the car when I became trustee.

836 E. E. SCANNELL, recalled, for cross examination, on behalf of Defendant Harrell, examined by Mr. Boone, examination to be for all defendants.

I started keeping the books of the Wichita Royalty Company in 1921, at that time R. R. Robertson was trustee, and he continued as trustee until December 31, 1922. The next trustee was George W. Peckham, who was appointed on January 1, 1923, by the Judge of the 30th District Court. I knew Mr. Peckham slightly before he was appointed. Our offices were over in the Morgan Building and George Peckham and Bill Peckham and Walter Peckham and B. L. Fain had an office across the hall. It seems to me they came there from Houston in the spring of 1921, or in the summer, or soon after I went to work over there. I was a pretty b sy man along about that time, and I didn't get very well acquainted with them at the start. After George Peckham was elected trus-

tee I became well acquainted with him, and a few times we traded around together. I have gone over a lot of these account of the Wichita Royalty Company which I have presented against George Peckham. From the time I started to work for the Wichita Royalty Company I knew most every check that went out, and signed the majority of them, kept the books directly or indirectly, each month I got the bank statement and checked over the checks. Sometimes the bank statements were sent to us and sometimes we went and got them. As a rule the checks were posted from the voucher and then checked back against it. As a rule I knew what each
837 check was for. I was a good friend of George Peckham's, to such an extent that I held property in my name for him. He did trust me with several thousand dollars when he built his home, but it was done that way in order to make the Addition appear more salable, that an outsider was building that house. It was in my name, I contracted for it, however, George Peckham looked after the actual building. It was built by a man named Allen. He lives here in Wichita Falls. It seems to me that the contract price was $17,500.00, or $15,000.00, I don't recall which. It was built in the Marlborough Addition. I knew the house and lot belonged to George Peckham, who had bought it from the Marlborough Addition. I did not know at that time that the Marlborough Addition belonged to the Wichita Royalty Company.

Mr. Rogers:

We object to that as a conclusion of law, involving a mixed question of law and fact, and not the best evidence of title, and I move that the question and the prior testimony be stricken.

The Witness:

As a matter of fact, the lot had been bought long before that, before it became the property of the Wichita Royalty Company.

Q. When did the Wichita Royalty Company acquire a one-half interest in the Marlborough Addition?

Mr. Rogers:

The same objection to that and to all testimony relating to the title of the Marlborough Addition, or the ownership of stock in the Texas Investment Company, and for the further reason that the testimony already
838 shows that the addition was bought by and with the money of George Peckham as an individual, that it was a suburban venture, unrelated to the oil and gas business, that even to have bought it from a third person would have been beyond the scope of the power given to G. W. Peckham by the declaration of trust, and no transaction between George Peckham as an individual and himself as trustee, concerning the property, beyond the scope of that authority by the declaration of trust, in which he might deal, could be binding upon the trust. This objection is made to this testimony and all testimony that may hereafter be offered in respect to any matter concerning such transaction. May it be agreed that the objection continues throughout the record?

Mr. Boone:

Yes, sir.

(Which objection was by the Court overruled, to which ruling the Defendant then and there excepted.)

The Witness:

My recollection is that it was 1926, these lots were bought long prior to that; the record will show.

Mr. Boone:

We offer the deed in evidence.

(Marked "Defendant's Exhibit 45" as follows:)

939 DEFENDANT'S EXHIBIT 45.

Deed from G. W. Peckham to Wichita Royalty Company.

Consideration $1.00 and other valuable considerations.

Conveying to Wichita Royalty Company undivided 1/2 interest in and to those certain lots, tracts and parcels of land situated in Wichita County, Texas, described as follows:

Tract No. 1:

Being 51.59 acres of land out of the Cyrus Eakman Survey and described by metes and bounds as follows, to-wit:

Beginning at a stake for the common corner of Blocks 17, 18, 37 and 38 of Highland Irrigation Subdivision, which stake is 1076.2 feet west and 3237.6 feet south from the northeast corner of Cyrus Eakman Survey; thence west 1076.2 feet, a stake for the southwest corner of block 47 of said Irrigation Subdivision thence south 115 feet to a stake in center of avenue "X"; thence north 82 degrees and 40 minutes west with center line of Avenue
840 "X" 391.2 feet to a stake in center of Taylor Street; thence north 7 degrees and 20 minutes east with center line of Taylor street 890 feet to a stake; thence north with center line of Taylor street 641.3 feet to a stake in North line of Avenue "U"; thence east 30 feet to a stake for the southwest corner of lot eight (8) Block Eleven (11) Southside Addition; thence North with the West line of said Lot Eight (8), 134 feet to a stake in South line of Lot Four (4) Block thirty two A (32-a) Highland Addition; thence south 82 degrees and 40 minutes East 72.4 feet to an iron pipe in center of Taylor Street thence North 7 degrees and 20 minutes East with

center line of Taylor Street 30.3 feet to iron pipe under fence; thence East 1194.5 feet to stake; thence south 155 feet a stake for Southwest corner of Lot Seventeen (17), Block Nine (9), Southside Addition; thence East 50 feet to stake for Southeast corner of said Lot Seventeen (17); thence South along west line of Cotton Street 654.4 feet to a stake for Southeast corner of Block Twenty (20) of said Southside Addition; thence East 6.8 feet to stake for Northwest corner of Block Nineteen (19) and Northeast corner of Block Thirty Six (36) of said Highland Irrigation Subdivision; thence South 809.4 to the place of beginning, containing Fifty one (51.59) and .59/100 acres of land, and comprising lots Ten (10) to Sixteen (16) inclusive in Block (9); Lot One (1) to Eight (8) inclusive in Block Ten (10); Lots One (1) to Eight (8) inclusive in Block Eleven (11); all of Block Number Thirteen (13); all of Block Number Fourteen (14); all of Block Number Fifteen (15); all of Block Number Twenty (20); all of Block Number Twenty One (21); and all of Block Number Twenty Two (22); all being out of the Southside Addition to Highland Addition to the City of Wichita Falls, Texas; and also comprising the following:

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All of Block Number Thirty Six (36); all of Block Number Thirty Seven (37); all of Block Number Thirty Seven (37); all of Block Number Forty Seven (47); all of Block Number (48); all of Block Number Seventy Seven (77); and all of Block Number Seventy Eight (78); of the Highland Irrigation Subdivision according to the maps or plats duly recorded in the Deed Records of Wichita County, Texas.

Tract No. 2:

Being 6.06 acres of land out of the Cyrus Eakman Survey, and described by metes and bounds as follows, to-wit:

Beginning at a stake for the northwest corner of Lot 2, Block 12, Southside Addition to Highland Addition;

thence North 7 degrees and 20 minutes East 30 feet to stake in center of Avenue "U" thence East with the center of said Avenue "U" 145.2 feet to a stake; thence South
842 with center line of Taylor Street 611.3 feet to a stake; thence South 7 degrees 20 minutes West with the center line of Taylor Street 890 feet to a stake in center of Avenue "X", same being the Southwest corner of a tract of 51.59 acres heretofore deeded to parties herein named; thence North 82 degrees and 40 minutes West with center of Avenue "X" 190 feet to a stake; thence North 7 degrees and 20 minutes East with center line of Alley 920 feet to a stake; thence South 82 degrees and 40 minutes East 10 feet to a stake; thence North 7 degrees and 20 minutes East with West line of lot 2, Block 23, of said Southside Addition 202 feet to a stake in center of Allen Avenue; thence North 82 degrees and 40 minutes West with center of said Allen Avenue 50 feet to a stake; thence North 7 degrees and 20 minutes East with the West line of Lots 23 and 2 Block 12, of said Southside Addition, 355 feet to the place of beginning, containing 6.06 acres of land and comprising the East one-half of Blocks Nos. 40-a and 41-a of the Highland Addition to the City of Wichita Falls, and also Lots 1, 2, 23 and 24, Block 12, and Lots 1 and 2 of Block 23, of the said Southside Addition.

This conveyance is expressly made subject to the indebtedness against said tracts and each of them secured by vendor's liens retained and described in two certain deeds from the Highland Irrigation Company to J. A. Kemp, W. H. Peckham, G. W. Peckham and J. T. Harrel,
843 said deed covering Tract No. 1 above described being dated September 19th, 1925, and recorded in the Deed Records of Wichita County, Texas, in Volume 249, at Page 5, and said deed covering Tract No. 2 above described being dated January 8th 1926 and recorded in the Deed Records of Wichita County, Texas in Volume 255, at Page 260. As a part of the consideration for this conveyance the said Wichita Royalty Com-

pany assumes and agrees to pay one-half (1/2) of the indebtedness to the Highland Irrigation Company described in said deeds, and to save the said G. W. Peckham harmless from any liability on said vendor's lien notes.

To Have And To Hold the above described property together with all and singular the rights and appurtenances thereto in anywise belonging unto the said Wichita Royalty Company, its successors or assigns forever, and the said G. W. Peckham does hereby bind himself, his heirs, representatives and assigns, to warrant and forever defend, all and singular, said property unto the said Wichita Royalty Company, its successors or assigns, against every person whomsoever lawfully claiming or to claim the same or any part thereof.

In Witness Whereof the said G. W. Peckham has executed these presents this, the 10th day of April, A. D. 1926.

(Signed) G. W. PECKHAM.

844 Duly acknowledged by G. W. Peckham, on April 10, 1926, before E. E. Scannell, Notary Public in and for Wichita County, Texas.

Mr. Rogers:

We object to the introduction of the deed for the reasons above shown. Further, there is no proof of any delivery of the instrument to any person authorized to bind the trust by its acceptance. The testimony affirmatively shows that it was not intended that a delivery should be effect by the physical handing of it to the then bookkeeper of the trust, it being handed under the express direction that it should be secret and it also involves a subject matter not within the authority of the trustee, not within the scope of his powers, a transaction between himself as an individual, himself as trustee, and not binding upon the Wichita Royalty Company.

(Which objection was by the Court overruled, to which the defendant then and there excepted.)

The Witness:

Defendant's Exhibit 45, appears to be an assignment on the Malborough Addition, deed from Peckham to one-half interest in that addition. Signed by George Peckham, April 10, 1926. I took his acknowledgment as a notary public on that date. It was never recorded. The books show that on March 6, he gave a check for $17,623.70, from George Peckham, payable to the City National Bank, and notation on the voucher shows that it was for the purchase of the Marlborough Ad-
845 dition. Mr. Peckham told me to put that on the book, it is dated March 6, and probably put on the books during that month. On the check that went to the City National Bank, it had the amount of money payable to that bank. I could not say as to the notation on the voucher, it shows that this is the original, must have been put on sometime subsequent to it, probably, I do not have that information. The book showing the facts stated, has been in the office, and open for inspection to any interested person in the Wichita Royalty Company since March, 1926. I would say in March, 1926, the books of the Wichita Royalty Company showed that company owned a half interest in the Marlborough addition. I also have a journal entry, which is the original, from June 1, 1925, to May 31, 1927, Journal entry No. 27, and Journal entry No. 28. No. 27 says, March 6, real estate city property, $23,250.00 debit; notes payable Highland Irrigation Company, $23,215.00, to settle our half interest is six vendor lien notes of $7,738.50 each, due the Highland Irrigation Company, in one, two and three years, from September 19, 1925, bearing eight percent interest. On our purchase of half interest in Marlborough Addition to the City of Wichita Falls. Their journal entry 28, and checks 478 and 479 for the balance of consideration. That journal entry 27, is in the handwriting of the bookkeeper who kept the books under me. I got the information on

the journal entry from Mr. Peckham. I knew the Wichita Royalty Company was buying a half interest in the Marlborough Addition. In March, 1926, our books
846 showed that "Our Company, Wichita Royalty Company, owned a half interest in the Marlborough Addition under a contract of purchase. Journal entry No. 28, March 6, 1926, real estate. City property. Debit $2,727.00, credit notes payable Highland Irrigation Company, $2,720.00. To set up our half interest in six vendor lien notes of $909.00 due Highland Irrigation Company in one, two and three years, from January 8, 1927, bearing eight percent interest on our purchase of half interest in Marlborough Addition to the City of Wichita Falls, Texas. See J. E. 27, check 478, 479 for balance of consideration." The bookkeeper wrote that under my direction, this is the information we had from George Peckham, he told me that the Wichita Royalty Company was buying a half interest in the Marlborough Addition, and I knew it in March, 1926.

Mr. Boone:

We offer in evidence the journal entries No. 27 and 28, marked "Defendant's Exhibits 46 and 47" as follows:

DEFENDANT'S EXHIBIT 46.

JE 27.

March 6 Real Estate—City Property	23215.50
Notes payable—Highland Irrigation Co.	23215.50

To set up our 1/2 interest 6 vendor's Lien notes of $7,738.50 each due the Highland Irrigation Co. in 1-2-3 years from Sept. 19, 1925 bearing 8% interest per annum, on our purchase of 1/2 interest in the Marlborough Addition to the City of Wichita Falls, Texas (See J. E. 28 and checks Nos. 478 and 479 for balance of consideration.)

847 DEFENDANT'S EXHIBIT 47.

1926 J E 28

March 6	Real Estate—City Property	2727.00
	Notes payable—Highland Irrigation Co.	2727.00

To set up our 1/2 interest in 6 Vendor's Lien notes of $909.00 each due the Highland Irrigation Co. in 1-2-3 years from January 8, 1927, bearing 8% interest per annum, on our purchase of 1/2 interest in the Marlborough Addition to the City of Wichita Falls, Texas. (See J. E. 27 and checks Nos. 478 and 479 for balance of consideration.)

848 The Witness:

By reason of the facts stated, I knew that we were entitled to receive the deed to that property for the Wichita Royalty Company. On April 10, George Peckham presented me a deed and asked me to acknowledge it. He told me to say nothing about it, not record it, which is the only information I ever got on it. I never received any information of any kind or character pertaining to that deed. I have been the custodian of all the books, papers and documents of the Wichita Royalty Company. George Peckham did not tell me to do whatever I wanted to with the deed, either by letter, telegram, word of mouth or otherwise. It is my testimony that he told me to keep that deed a secret from everybody. Mr. Peckham was very exacting as to the records of the Wichita Royalty Company, so that no one saw them except us, that were interested in working with them at all times; no stockholders ever saw the Wichita Royalty Company records. I saw them and the bookkeeper that was working under me. We continued to carry on the Wichita Royalty Company part of the improvement on the Marlborough Addition, paving, lights, water and gas, our ledger shows, and that is the complete transaction on that page for that particular period.

Defendant's Exhibit 43 is the original ledger sheet, and shows the expenditures of the Wichita Royalty Company on the Marlborough Addition, May 31, 1928. Those items do not represent the checks paid out by the Wichita Royalty Company on the Marlborough Addition as well as total cost of $65,578.70; that is the offsetting
849 entry to the debit side of this, carrying forward at the end of the year, that has nothing to do with it.

Mr. Boone:

We offer the exhibit in evidence.

(Instrument marked "Defendant's Exhibit No. 48" and reading as follows:)

DEFENDANT'S EXHIBIT 48.

Name—Land in Fee.

Address.....

Date 1926	Items	Fol.	Debits	Date 1926	Items	Fol.	Credits
March 6	C. N. B.	478	17,623.70	May 31		JE43	65,578.70
	S. N. B.	479	6,000.00				
		JE27	23,215.50				
		JE28	2,727.00				
31	Improvements	485	7,500.00				
May 20	"	503	3,000.00				
29	"	507	1,500.00				
31	Porter Ranch	JE36	4,012.50				
			65,578.70				65,578.70

741

850 The Witness:

The bookkeeper wrote the original record, under my direction. The next expenditure is shown by Exhibit 49, it shows notes payable, Highland Irrigation Company, Wichita Falls, and has to do with the credit side of the journal entries that were made, Nos. 28 and 27. Has to do with the ownership of the Wichita Royalty Company, in the Marlborough Addition.

Mr. Boone:

We offer that in evidence and ask that it be photostated.

(Instrument marked "Defendant's Exhibit 49" as follows:)

DEFENDANT'S EXHIBIT 49.

Name: Notes payable—Highland Irrigation Company.

Address: Wichita Falls, Texas.

Date	Items	Fol.	Debits	Date	Items	Fol.	Credits
1926				1926			
May 31		JE43	25,942.50	March 6	Due 1-2-3 years from 9-19-25, 8% interest due	JE27	23,215.50
					1-2-3 years from 1-8-27, 8% interest	JE28	2,727.00
			25,942.50				25,942.50

851 The Witness:

Exhibit No. 50, notes payable Highland Irrigation Company, and has to do with the transfer of the two notes to the Highland Irrigation Company, or series of notes. The bookkeeper wrote that in the ledger under my direction. It goes down to June 1, 1926. I knew during all that time that the Wichita Royalty Company was claiming half interest in the Marlborough Addition. Journal entry on Defendant's Exhibit 48 is No. 27, and the next is 28. No. 485 is the voucher check, which has been introduced in evidence, and also 503 and 507. Journal entry 26 is on the Porter Ranch. Journal entry No. 43, is offsetting entry for closing out the books for the particular period of the years, it says, "land in fee, credit $65,678.70," that was written in the journal of the Wichita Royalty Company by the bookkeeper under my direction, May 31, 1926. I knew then that the Wichita Royalty Company had bought, in fee, this particular property.

Mr. Rogers:

We object with reference to any matter other than the Marlborough Addition, for the reason that it is not the best evidence, there being no showing of any conveyance by G. W. Peckham to his trust, and it being a matter between the trustee individually and himself as trustee.

(Which objection was by the Court sustained, to which Defendant, J. T. Harrell excepted.)

The Witness:

I have had charge of those books since those entries were made, the books have been held in the of-
852 fice of Wichita Royalty Company, under my supervision as an employee of the Wichita Royalty Company. George Peckham did not tell me to do anything with that deed, other than to keep it secret. I thought a great deal of George Peckham, he was my friend.

Exhibit No. 50, represents Journal entry No. 1, dated June 1, 1926. Shows notes payable, land $2,762.50. Just above that one it shows $25,942.50. The writing on No. 1, shows "Notes payable Highland Irrigation Company, $25,942.50. That was written by the bookkeeper under my direction. I was heading up that as a liability against the Wichita Royalty in favor of the Highland Irrigation Company. It is a matter of record in the books. Mr. Peckham never told anything about the Marlborough Addition business to anyone or the Wichita Royalty Company business to anyone, and it was never made public by anybody in our office. He did not tell me to keep it a secret about charging it on the books of the Wichita Royalty Company, that the Wichita Royalty Company owed the Highland Irrigation Company $27,000.00 plus, that could not have been when we made the entries on the books. Mr. Peckham told me to keep those books away from anybody outside of us. Mr. Peckham was very cautious about it, careful to tell us always not to allow anybody to look at the Wichita Royalty Company books without first talking to him. I think the bookkeeper saw that deed, it was kept in the file in the safe, among the Wichita Royalty Company records.

The next journal entry, Exhibit 50, No. 39, does
853 not have anything to do with it, it says, May 31, 1927, notes payable to Highland Irrigation Company, $18,204.00, that is an offsetting entry closing out the year, May 31, 1927. The bookkeeper wrote that under my direction, in the books; I knew on May 31, 1927 that the Wichita Royalty Company owed the Highland Irrigation Company that much money. I will make an explanation. No. 50, account Highland Irrigation Company, it shows June 1, 1926, an entry of $23,215.50, on the credit side, and there is a notation written in there for our detailed information, due 1-2 and 3 years from 9-19-25, with eight percent interest, and there is another item on the same date, for the same amount, $2,727.00, which reads "Due 1, 2, 3 years from 1-8-27, eight percent interest, total of the two being $25,942.50."

I knew on May 31, 1927, the records of the Wichita Royalty Company showed that it owned a half interest in the Marlborough Addition; I further knew that prior to that time George Peckham had bought two of the lots out of the Marlborough Addition after it was platted, lots 1 and 2 in block 7. It was not planted until the deed, Defendant's Exhibit 45, was delivered. I think that George Peckham and I bought a string of lots together when the addition first formed, I think we bought the first lots that were ever sold in it, George took lots 1, 2, and 3, and I took four and five. I believe the whole transaction was in my name. I could not tell you when George Peckham started building. I build on my lots started in the spring of 1927—I am mistaken, mine was No-
854 vember 16, 1927. My recollection is that George Peckham's house cost $15,000.00 to $17,500.00, the original contract price, if I remember right, was sixteen and some odd thousand dollars. Then there were some changes made to increase it, I think it cost something over seventeen thousand dollars. My house cost me $9,800.00, and my contract was $7,500.00. Martin Litrell built my house, I don't know where he is now. Prior to the time George Peckham took out a permit to build this house, which in my name, he paid me some money, and after the house was started, made payments to the contractor. I do not remember those amounts. I do not have my bank statements. Originally I drew $300.00 per month from the company, then it was reduced to $200.00. George Peckham never gave me any money that I know of, he did write some checks to me, we were in deals together a number of times, real estate and oil deals. The first deal we had was a block of lots out there by the Catholic cemetery.

Mr. Rogers:

Let the record reflect an objection on behalf of Wichita Royalty Company, to an inquiry into the personal private transactions between strangers to the Wichita Royalty Company, relative to matters not related to or growing

out of any matter at issue in this case, and being transactions wholly between them as individuals, and it is encumbering the record and immaterial.

(Which objection was by the Court sustained, to which objection of the Court the defendant, J. T. Harrell then and there excepted.)

855 The Witness:

George Peckham and I had several personal transactions. I did not do any work for George Peckham other than bookkeeper for the Wichita Royalty Company —when I first went to work for him, he had a little royalty Company, and afterwards it consolidated with the Wichita, and we organized another one in which George was the trustee, and I got some pay for handling that, I think it was $100.00 per month, not to exceed a year. I did not keep those books, that is for myself. I am a bookkeeper but have had very little training, I started bookkeeping about 1914.

I do not know what George Peckham gave me a check for $25.00 for on June 27, 1923, we might have been playing a little poker.

Mr. Boone:

We offer ledger sheet No. 50, and check, Exhibit No. 51, in evidence, reading as follows:

(Instruments marked Defendant's Exhibits 50 and 51.)

DEFENDANT'S EXHIBIT 50.

Name: Notes Payable.

Address: (Highland Irrigation Co., Wichita, Falls, Texas.)

Date	Items	Fol.	Debits	Date	Items	Fol.	Credits
1926				1926			
Aug. 2		525	4,000.00	June 1	Due 1-2-3 years from 9-19-25 8% interest due JE1		23,215.50
27		532	3,738.50				
1927					1-2-3 years from 1-8-27 8% interest.....		2,727.00
May 31	Transferred new ledger JE39		18204.50				
			25,942.50				25,942.50

856 DEFENDANT'S EXHIBIT 51.

Check, dated at Wichita Falls, Texas, 6-27-23. No. .... City National Bank of Commerce Pay to E. E. Scannell, $25.00. Signed by G. W. Peckham Indorsed E. E. Scannell. Stamped (2) The Security National Bank Clearink House Paid June 28, 1923, Wichita Falls, Texas. (Perforated) Paid 6-27-23.

The Witness:

I don't know whether George Peckham gave me $229.40 on August 30, 1923 or not, nor do I know what I did with the money. I will be glad to try to find out. I think I got it. It was Mr. Peckham's personal check.

Mr. Boone:

We offer it in evidence.

DEFENDANT'S EXHIBIT 52.

Check, Wichita Falls, Texas, August 30, 1923, No. .... City National Bank of Commerce 88/130 Pay to E. E. Scannell or Bearer $229.40. Signed by G. W. Peckham. Indorsed by E. E. Scannell (In pencil) Security Nat'l Bank 9-1-23. (Perforated) Paid 9-1-23. (Stamped) 2. E W S ..... W TC

The Witness:

I do not know what the check was for, dated November 26, 1923, from George Peckham to me in the amount of $400.00. That was out of Mr. Peckham's personal account, I guess. It is marked Paid. I indorsed it and got the money, I do not know what I did with it.

Mr. Boone:

We offer it in evidence.

857 DEFENDANT'S EXHIBIT 53.

Check, Wichita Falls, Texas, dated 11-24-1923 No. .... City National Bank of Commerce 88/130 Pay to the order of E. E. Scannell $400.00. (Signed) G. W. Peckham. Indorsed by E. E. Scannell and perforated paid 11-23-23.

The Witness:

I do not know what George Peckham gave me a check for $350.00 for, on December 8, 1923. I got the money, that is my indorsement, Mr. Peckham had some reason for giving it to me, and I will make an attempt to find out.

Mr. Boone:

We offer the check in evidence.

DEFENDANT'S EXHIBIT 54.

Check dated Wichita Falls, Texas, 12-8-1923 No. .... City National Bank of Commerce 88/130 (Stamped) "7" Pay to the order of E. E. Scannell $350.00. (Signed) G. W. Peckham, indorsed E. E. Scannell, (Perforated) Paid 12-8-23.

The Witness:

You now hand me a check payable to E. E. Scannell, signed by G. W. Peckham for $651.00 and the notation on it, Bowden interest sold to Shaw. I have no recollection of what that was for.

Mr. Boone:

We offer it in evidence.

DEFENDANT'S EXHIBIT 55.

Check Dated Wichita Falls, Texas, 2-20-24 No. .... City National Bank of Commerce 88/130 Pay to E. E.

Scannell, $651.83. Signed by G. W Peckham.
858 (In ink) Bowden Interest. Sold to Shaw. Indorsed E. E. Scannell. (Perforated) Paid 2-23-23. (Stamp) The Security National Bank Clearing House Paid Feb. 28, 1924.

The Witness:

I think I identified that for you in the previous trial, many of these transactions. I believe I had an interest in the Netherton, at one time, in a well drilled on that land. The check for $50.00, dated February 21, 1924, says interest in fifty acres Neatherton, sold to Newberry. I had something to do with that, but I don't recall exactly whether it was a commission or whether I sold some acreage, or whether Mr. Peckham purchased an interest I had in the well. I got the money.

Mr. Boone:

We offer it in evidence, as Defendant's Exhibit 56.

DEFENDANT'S EXHIBIT 56.

(Check) Dated Wichita Falls, Texas, February 21, 1924. No. .... City National Bank of Commerce 88/130. Pay to E. E. Scannell, $50.00, signed by G. W. Peckham. (In ink) Int. in 50 acres Netherton, sold Newberry Indorsed E. E. Scannell. (Perforated) Paid 2-25-24. (Stamped) "3" (Stamped) The Security National Bank Clearing House, Paid Feb. 25, 1924.

The Witness:

I remember the check dated February 2, 1924, which George Peckham gave me for $797.50, that was a deal in
859 which I was interested and this is part of my back. I don't recall just now what deal. I do not think the royalty company was interested in it. I deposited the money in the Security National Bank and will make an attempt to run it down.

Mr. Boone:

We offer the check in evidence, Defendant's Exhibit 57.

DEFENDANT'S EXHIBIT 57.

Dated Wichita Falls, Texas, 2-2-24 No. .... City National Bank of Commerce 88/130 Pay to E. E. Scannell, $797.50. Signed by G. W. Peckham. Indorsed by E. E. Scannell, perforated paid 3-11-24. (Stamped) "3" (Stamped) Security National Bank Clearing House, Paid Mar. 11, 1924, Wichita Falls, Texas.

The Witness:

On March 19, 1924, check for $2,000.00, my memory is that this was the return of money I had invested with Mr. Peckham in the purchase of the Wilson royalty, I put up $2,000.00 when they started to buy it. I will endeavor to find out about that. I had nothing to do with selling that royalty to the Wichita Royalty Company, knew nothing about the transactions, how they were made, and I put up the money when the deal was made, just to have an interest in it. I think I got some profits, probably $800.00 or $1,000.00, I am not certain, and don't remember when I got it, but it was after it was sold. The Wichita Royalty Company records will not show when the Wilson Royalty was bought, except by that company. The Wichita Royalty Company books show that on February 2, 1924, check No. 75, check No. 154, for
860 $12,000.00, was issued. On March 17, check No. 185, for $1,950.00 was issued. I think that was the last of the transaction, however, I don't remember. On March 19, I got $2,000.00, that check for $797.50 might be part of it.

Mr. Boone:

We offer the check in evidence, Defendant's Exhibit 58.

DEFENDANT'S EXHIBIT 58.

Wichita Falls, Texas Dated 3-19-1924 No. .... City National Bank 88/130, Pay to the order of E. E. Scannell $2,000.00. This check is in settlement as shown hereon. Acceptance by indorsement constitutes receipt. Signed G. W. Peckham, indorsed E. E. Scannell. Perforated Paid 3-20-24. (Stamped) Security National Bank Clearing House, Paid Mar. 20, 1924, Wichita Falls, Texas.

The Witness:
I do not know what George Peckham gave me $270.00 for on April 15, 1924, I got the money, I will endeavor to find out.

Mr. Boone:
We offer the check in evidence, Defendant's Exhibit 59.

DEFENDANT'S EXHIBIT 59.

Wichita Falls, Texas, Dated 4-15-1924 No. .... 11 City National Bank 88/130 Pay to the order of E. E. Scannell, $270.00. This check is in settlement as shown hereon. Acceptance by indorsement constitutes receipt.
861 Signed by G. W. Peckham. Indorsed E. E. Scannell. Perforated Paid 4-22-24. (Stamped) The Security National Bank Clearing House Paid Apr. 22, 1924.

The Witness:
I do not know what George Peckham gave me a check for $880.00 on April 15, 1925, for, I will endeavor to find out. I got the money.

Mr. Boone:
We offer it in evidence.

DEFENDANT'S EXHIBIT 60.

Wichita Falls, Texas, Dated 5-14-1924 No. .... 11 City National Bank 88/130 Pay to the order of E. E. Scannell $880.00. This check is in settlement as shown hereon. Acceptance by indorsement constitutes receipt. (Signed) G. W. Peckham. Indorsed by E. E. Scannell. Perforated Paid 4-22-24. The Security National Bank Clearing House paid Apr. 22, 1924, Wichita Falls, Texas.

The Witness:

I do not think George Peckham ever kept any kind of books for himself. I kept records to show what I got so I could settle with Uncle Sam. I don't know whether I still have all of my records or not. I don't remember whether George Peckham gave me a check for $80.00 on January 4, 1925 or not, it may have been for a little poker game some Saturday afternoon or something like that. I can find out. I got the money on that check.

Mr. Boone:

We offer it in evidence.

862 DEFENDANT'S EXHIBIT 61.

Wichita Falls, Texas, dated 1-24-1925 No. .... 88 130 11 The City National Bank of Wichita Falls "7" Pay to the order of E. E. Scannell $80.00. Signed by G. W. Peckham (Stamped) Pay City National Bank Of Commerce Wichita Falls, Texas Or Order P. B. M. Co. 12-12 (Perforated Paid 1-27-25 Indorsed by E. E. Scannell.

The Witness:

The check dated February 4, 1925, for $100.00, is one of a series of checks. I imagine that this is about the time that I started taking over and looking after the Tolowa Royalty Company, it was organized by George

Peckham and subsequently he dropped out and B. L. Fain became the president. I worked for Mr. Peckham from the start of that corporation. He gave me his personal checks and I got the money on them, however, I will attempt to find out definitely.

Mr. Boone:
We offer it in evidence as Defendant's Exhibit No. 62:

DEFENDANT'S EXHIBIT 62.

Wichita Falls, Texas 2-4-1925 No. .... City National Bank of Wichita Falls, Pay to the order of E. E. Scannell $100.00. Signed by G. W. Peckham. Indorsed E. E. Scannell. (Perforated) Paid 2-6-25 (Stamped) The Security National Bank Clearing House, Paid Feb. 6, 1925, Wichita Falls, Texas.

863 The Witness:
The check dated February 16, 1925, G. W. Peckham, in the amount of $50.35, I imagine is about like the other one, I will attempt to check up and find out about that.

Mr. Boone:
We offer it in evidence as Defendant's Exhibit 63.

DEFENDANT'S EXHIBIT 63.

Wichita Falls, Texas 2-16-1925 No. .... City National Bank of Wichita Falls "7" Pay to the order of E. E. Scannell. $50.35. Signed by G. W. Peckham. Indorsed by E. E. Scannell. (Stamped) City National Bank of Commerce, Wichita Falls, Texas. Perforated Paid 2-19-25. (Stamped) Perkins-Timberlake Co., or order. 265-265.

The Witness:

The check dated March 2, 1925, that G. W. Peckham gave me for $100.00, I am quite sure that is the second one, or at least one of the $100.00 payments that I received from George Peckham for looking after the Tolowa Oil Royalty Corporation. Up until January 1, 1925, I was drawing $300.00 from the Wichita Royalty Company. On February 1, 1925, he cut my salary to $200.00, and I took the Tolowa Royalty Corporation and he paid me for that personally. Somewhere about January 1, 1925, George Peckham cut his own salary from $500.00 to $400.00. For January, 1925, I received check No. 334 for $200.00 and George Peckham received check No. 338 for $400.00. Mr. Peckham cut his own salary, my salary was not really cut, I took on additional work.
864 The work of the Wichita Royalty Company was rather exacting, and done with a very small amount of help, the most help we ever had was one bookkeeper, a stenographer and myself. In 1925 I don't imimagine we had as much work with the Wichita Royalty Company as we had had. On April 21, 1925, George Peckham gave me his check for $100.00, I imagine that was on the Tolowa, I will look it up and attempt to find out.

Mr. Boone:

We offer the check in evidence, marked "Defendant's Exhibit 64".

DEFENDANT'S EXHIBIT 64

Wichita Falls, Texas, dated 4-1-25 No. . . . . City National Bank of Wichita Falls, pay to the order of E. E. Scannell, $100.00. Signed G. W. Peckham. Indorsed E. E. Scannell. Perforated paid 4-2-25. (Stamped) The Security National Bank Clearing House, Paid April 2. 1925, Wichita Falls, Texas.

The Witness:

On May 2, 1925, George Peckham gave me his personal check for $100.00 and I got the money.

Mr. Boone:

We introduce the check in evidence marked "Defendant's Exhibit 65."

DEFENDANT'S EXHIBIT 65.

Wichita Falls, Texas, dated 3-2-25 No. .... City National Bank of Wichita Falls, pay to the order of E. E. Scannell, $100.00. Signed by G. W. Peckham. Indorsed E. E. Scannell. Perforated Paid 3-4-25. (Stamped) The Security National Bank Paid Mar. 4, 1925, Clearing House, Wichita Falls, Texas.

865 The Witness:

As I have stated, Mr. Peckham gave me a check on May 2, for which I got the money.

Mr. Boone:

We offer it in evidence.

DEFENDANT'S EXHIBIT 66.

Wichita Falls, Texas, Dated 5-2-25, No. .... City National Bank of Wichita Falls, pay to the order of E. E. Scannell, $100.00. Signed by G. W. Peckham. Indorsed E. E. Scannell. Perforated paid 5-4-25 "3" (Stamped) The Security National Bank Clearing House paid May 4, 1925 Wichita Falls, Texas.

The Witness:

On June 1, 1925, George Peckham gave me his personal check for another $100.00, and I got the money on it.

Mr. Boone:
We offer it in evidence.

DEFENDANT'S EXHIBIT 67.

Dated Wichita Falls, Texas, 6-1-25 No. .... The City National Bank of Wichita Falls. Pay to the order of E. E. Scannell, $100.00, signed by G. W. Peckham. Indorsed E. E. Scannell, perforated (Paid 6-15-25) (Stamped) The Security National Bank Clearing House, paid June 17, 1925, Wichita Falls, Texas. "3".

The Witness:
On July 7, 1925 George Peckham gave me his personal check for $100.00 and I got the money on it, I think it was for the same job.

866 Mr. Boone:
We offer it in evidence.

DEFENDANT'S EXHIBIT 68.

Wichita Falls, Texas, 7-7-25 No. .... City National Bank of Wichita Falls, pay to the order of E. E. Scannell, $100.00, signed by G. W. Peckham. Indorsed E. E. Scannell, Perforated Paid 7-7-25 "3" (Stamped) The Security National Bank Clearing House Paid July 7, 1925 (in pencil) 290.54 Wichita Falls, Texas.

The Witness:
On August 1, 1925, George Peckham gave me his personal check for $100.00, on which I got the money, for the same thing.

Mr. Boone:
We offer it in evidence.

DEFENDANT'S EXHIBIT 69.

Wichita Falls, Texas, Dated 8-1-25 No. . ,.. City National Bank Wichita Falls, pay to the order of E. E. Scannell, $100.00. Signed by G. W. Peckham. Indorsed E. E. Scannell, perforated paid 8-3-25 "2" (Stamped) The Security National Bank, Clearing House Paid Aug. 3, 1925, Wichita Falls, Texas.

The Witness:
On September 10, 1925, George Peckham gave me his personal check for $100.00, on which I got the money, for the same thing.

Mr. Boone:
We offer it in evidence.

867 DEFENDANT'S EXHIBIT 70.

Wichita Falls, Texas, Dated 9-10-1925. No. .... The City National Bank of Wichita Falls, pay to the order of E. E. Scannell, $100.00, signed by G. W. Peckham, indorsed E. E. Scannell. Perforated paid 9-12-25. "3" (Stamped) The Security National Bank, Clearing House paid Sep. 12, 1925, Wichita Falls, Texas.

The Witness:
On October 1, 1925, George Peckham gave me his personal check for $100.00, on which I got the money. I think that was on the Tolowa, too.

Mr. Boone:
We offer it in evidence.

DEFENDANT'S EXHIBIT 71.

Wichita Falls, Texas 10-1-25, No. .... The City National Bank of Wichita Falls, pay to the order of E. E.

Scannell, $100.00, signed by G. W. Peckham, indorsed E. E. Scannell, Perforated Paid 10-5-25 "1". (Stamped) The Security National Bank Clearing house paid Oct. 5, 1925 Wichita Falls, Texas.

The Witness:

On October 31, 1925, G. W. Peckham gave me his personal check for $100.00, on which I got the money and I am sure it was for the Tolowa.

Mr. Boone:

We offer it in evidence, Defendant's Exhibit 72.

DEFENDANT'S EXHIBIT 72.

Dated Wichita Falls, Texas 10-31-25 No. .... The City National Bank of Wichita Falls, pay to the order
868 of E. E. Scannell, $100.00, signed by G. W. Peckham, indorsed E. E. Scannell. Perforated paid 11-3-25. (Stamped) Security National Bank Clearing House November 3, 1925, indorsement guaranteed, Wichita Falls, Texas. (In ink) 7,003.05.

The Witness:

During all of this time from January 1, up to November 1, 1925, my salary remained the same by virtue of giving me another set of books to keep, making $300.00. During this time George Peckham's salary was $400.00, and remained so until he died. Perhaps he was not giving all of his time to the Wichita Royalty Company, I don't know whether he got any pay out of the Tolowa or not.

On August 1, 1925, George Peckham gave me a check for $218.97, and it says, "Sale of lots." I imagine that is my part of the sale of one of those lots out there by the Catholic cemetery which we owned jointly.

Mr. Boone:

We offer it in evidence.

DEFENDANT'S EXHIBIT 73.

Dated, Wichita Falls, Texas, 8-1-1925 No. .... City National Bank of Wichita Falls, pay to the order of E. E. Scannell, $218.97. Signed by G. W. Peckham, indorsed E. E. Scannell. Perforated paid 8-3-25. "2" (Stamped) The Security National Bank Clearing House, August 3, 1925. Paid Wichita Falls, Texas.

869 The Witness:

I did not make lots of money out of George Peckham, I made money with him. You have introduced checks totaling $7,003.05 up to date. I will do my best to tell you what each of these checks were for and what services I rendered George Peckham for each one of them. I don't know whether that is all of the money I got out of George Peckham or not. We used to trade together, we bought and sold together. I did not keep any record or memorandum of my business, only for the purpose of income tax. On March 27, 1926, George Peckham gave me $400.00, and it shows a half payment on twenty lots, I imagine that is twenty, it is either twenty or two, I can't be certain. I got the money on it.

Mr. Boone:

We offer it in evidence.

DEFENDANT'S EXHIBIT 74.

Dated Wichita Falls, Texas, 3-27-26 No. .... City National Bank Wichita Falls, Pay to the order of E. E. Scannell, $400.00. One-half cash payment on 20 lots. Signed by G. W. Peckham. Indorsed E. E. Scannell. Perforated Paid 3-29-25. "2" (Stamped) Security National Bank Clearing House. Paid Mar. 29, 1926. Indorsement guaranteed, Wichita Falls, Texas.

The Witness:

I think that is for the first payment on the string of lots that George Peckham and I bought in the Marlborough Addition, they were bought in my name, as I recall. I can't tell you just when they were bought, whenever the Peckham boys and Mr. Harrell and Mr. Kemp
870 put it on, we were the first purchasers, as I remember, of any lots in that addition. On May 28, 1926, G. W. Peckham gave me $79.09 on those Marlborough lots, I am quite sure his proportionate part of the payment and the interest. I don't remember what I paid for those lots, I can find it on the Marlborough books, I suppose, I have my checks, but I am not certain, I will endeavor to find it.

Mr. Boone:

We offer the check in evidence.

DEFENDANT'S EXHIBIT 75.

Dated, Wichita Falls, Texas 5-28-26 No. .... The City National Bank of Wichita Falls, pay to the order of E. E. Scannell, $79.09. Signed by G. W. Peckham, Indorsed E. E. Scannell, perforated paid 6-3-26. "3" (Stamped) Security National Bank Clearing House Paid June 3, 1926, indorsements guaranteed, Wichita Falls, Texas.

The Witness:

I do not remember whether on June 15, 1926 George Peckham gave me a check for $1,000.00 or not, that has been ten years ago. I know I never committed any fraud, and I am quite certain there is no fraud involved in it. I will attempt to run it down.

Mr. Boone:

We offer it in evidence.

DEFENDANT'S EXHIBIT 76.

Check No. .... City National Bank. 88/130, Wichita Falls, Texas, 6-15-1926 Pay to the order of Cash
871 $1,000.00. Signed by G. W. Peckham, (Stamped) City National Bank "6" Wichita Falls, Texas. Indorsed E. E. Scannell. Perforated paid 6-12-26.

The Witness:
On June 26, 1926, George Peckham gave me $47.19, and it says payment on 3 lots on Marlborough Addition, $37.50 principal, $9.69 interest, and that would be perhaps half of the total payment that was made. I will endeavor to get my check.

Mr. Boone:
We offer it in evidence.

DEFENDANT'S EXHIBIT 77.

Dated Wichita Falls, Texas 6-26-26 No. .... City National Bank of Wichita Falls, Pay to the Order of E. E. Scannell, $47.19. This check is in full settlement as shown hereon. Acceptance by indorsement constitutes receipt. Payment on 3 lots on Marlborough Addition 37.50 principal 9.67 interest, total $47.19. Signed by G. W. Peckham. Indorsed E. E. Scannell. Perforated Paid June 28, 1926. (Stamped) Security National Bank Clearing House paid June 28, 1926, indorsements guaranteed, Wichita Falls, Texas.

The Witness:
I do not know whether George Peckham gave me $490.00 on July 26, 1926 or not. I will endeavor to trace it.

Mr. Boone:
We offer it in evidence.

872 DEFENDANT'S EXHIBIT 78.

Wichita Falls, Texas, 7-26-1926 No. .... City National Bank of Wichita Falls, Pay to the order of E. E. Scannell, $490.00. This check is in full settlement as shown hereon. Acceptance by indorsement constitutes receipt in full. (Signed) G. W. Peckham. Indorsed by E. E. Scannell, perforated Paid July 27, 1926. (Stamped) Security National Bank Clearing House Paid July 27, 1926. Indorsements guaranteed, Wichita Falls, Texas. "2".

The Witness:

On July 31, 1926, George Peckham gave me a check for $46.95, which was where we made a payment on the Marlborough lots, I am quite sure that is half of the payment made. The Marlborough books will reflect the payments, I am quite sure. I will attempt to get my checks and find out.

Mr. Boone:

We offer it in evidence.

DEFENDANT'S EXHIBIT 79.

Dated, Wichita Falls, Texas, 7-31-1926 No. .... City National Bank of Wichita Falls, Texas, Pay to the order of E. E. Scannell, $46.95. This check in full settlement as shown hereon, acceptance by indorsement constitutes receipt in full. Payment on Marlborough Lots. Signed by G. W. Peckham. Indorsed E. E. Scanneli, paid 8-2-26 (Perforated.) (Stamped) Security National Bank Clearing House Paid Aug. 2, 1926, Indorsements guaranteed. Wichita Falls, Texas.

873 The Witness:

On July 31, 1926, Mr. Peckham gave me a check for $179.19, which is a payment on pavement on Marlborough Lots. When we first bought these lots they

were unpaved and we had to pay in our proportionate part on the paving that was put down subsequent, I am quite sure my check doubled that amount, the Marlborough books will reflect the payment.

Mr. Boone:
We offer it in evidence.

DEFENDANT'S EXHIBIT 80.

Dated, Wichita Falls, Texas, 7-31-1926 No. .... City National Bank of Wichita Falls, Pay to the order of E. E. Scannell, $179.19. This check is in full settlement as shown hereon. Acceptance by indorsement constitutes receipt in full. Pavement on Marlborough lots. Signed by G. W. Peckham. Indorsed E. E. Scannell, perforated Paid 8-2-26. (Stamped) Security National Bank Clearing House paid Aug. 2, 1926. Indorsements guaranteed. Wichita Falls, Texas.

The Witness:
On August 28, 1926, $8,100.00, payable to E. E. Scannell, signed by G. W. Peckham, I am quite sure that that is the first payment to Mr. Allen, or the first two payments to Mr. Allen on the building of George Peckham's house. Mr. Peckham took out the permit on August 14, 1926. I think Mr. Peckham went to Colorado and left that $8,-100.00 with me, I don't know that I paid it out right then, but perhaps a little later. Then on October 2, 1926, is a check payable to me for $93.40. It says, two pay-
874 ments on Marlborough lots, and I am quite sure that that is his half of the check that I gave to the Marlborough Addition in payment of the lot, but it would be reflected on the Marlborough books, which I will get. My books will show for double that amount, I will try to find it.

Mr. Boone:
We offer it in evidence.

DEFENDANT'S EXHIBIT 81.

Wichita Falls, Texas 10-2-1926 No. .... The City National Bank of Wichita Falls, Pay to the order of E. E. Scannell, $93.40. This check is in full settlement as shown hereon. Acceptance by indorsement constitutes receipt in full. Two payments on Marlborough Lots. (Signed) G. W. Peckham indorsed E. E. Scannell "3" (Perforated) Paid 10-4-26. (Stamped) Security National Bank Clearing House Paid Oct. 4, 1926. Indorsements Guaranteed, Wichita Falls, Texas (Pencil) 532.32.

The Witness:

On November 16, 1926, I am quite sure G. W. Peckham gave me a check for $4,250.00, which was another check given in payment of the building of his house. On November 1, 1926, George Peckham gave me a check for $46.20, it shows payment on Marlborough Lots, and probably with reference to half of the payment that was made on that date on the Marlborough. It will be reflected on the Marlborough books. I will try and get my check which shows double that amount.

Mr. Boone:

We offer it in evidence.

875 DEFENDANT'S EXHIBIT 82.

Dated, Wichita Falls, Texas, 11-10-1926 No. .... The City National Bank of Wichita Falls, Pay to the order of E. E. Scannell, $46.20. This check in full settlement as shown hereon. Acceptance by indorsement constitutes receipt in full. Payment on Marlborough Lots. Signed G. W. Peckham, Indorsed E. E. Scannell Perforated Paid 11-10-26, (Stamped) Security National Bank Clearing House Paid Nov. 12, 1926. Indorsements guaranteed, Wichita Falls, Texas.

The Witness:
Going back to those two checks, one dated August 28, 1926, for $8,100.00 and one dated October 15, 1926 for $4,-250.00, making a total of $12,350.00, my memory is that the total amount was paid, it seems to me, $17,500.00 altogether. It may be less than that. I think I had a special account in the City National Bank that will reflect the payments made on that house.

Mr. Boone:
We offer both of these checks in evidence, marked "Defendant's Exhibits 83 and 84".

DEFENDANT'S EXHIBIT 83.

Dated Wichita Falls, Texas, 8-28-1926 No. .... City National Bank of Wichita Falls, Pay to the order of E. E. Scannell, $8,100.00. (Stamped) City National Bank "6" Wichita Falls, Texas. City National Bank "2" Wichita Falls, Texas. This check is in full settlement as
876 shown hereon. Acceptance by indorsement constitutes receipt in full. Signed by G. W. Peckham. Indorsed E. E. Scannell, Perforated Paid 8-31-26. (NSF).

DEFENDANT'S EXHIBIT 84.

Dated, Wichita Falls, Texas, 10-16-1926 No. .... The City National Bank of Wichita Falls, Pay to the order of E. E. Scannell, $4,250.00, This check in full settlement as shown here. Acceptance by indorsement constitutes receipt in full. Signed G. W. Peckham, (Stamped) City National Bank "8" Wichita Falls, Texas. Indorsed E. E. Scannell Perforated Paid 10-18-26.

The Witness:
On December 8, 1926, George Peckham gave me a check for $447.65, which was the planting of shrubs around his

home. It says, "Shrubs and plants" on the check. I will get my check where I paid it out. I got the money on it.

Mr. Boone:
We offer it in evidence.

DEFENDANT'S EXHIBIT 85.

Dated Wichita Falls, Texas, 12-8-1926 No. . . . . The City National Bank of Wichita Falls, Pay to the order of E. E. Scannell, $447.65. This check is in full settlement as shown hereon. Acceptance by indorsement constitutes receipt in full. Shrubs & Plants. (Signed) G. W. Peckham. Indorsed E. E. Scannell Perforated Paid 12-9-26.

The Witness:
The last bunch of checks that you have offered in evidence total $15,179.67, and I will find out what
877 each of those checks were and what I did with the money.
The check dated January 25, 1927, $137.85, says, "Three payments and interest on Marlborough Lots." I got the money on it and I imagine that is half of the payment that was made on the purchase of those Marlborough lots. The Marlborough books will reflect twice that size, and my checks will reflect that payment.

Mr. Boone:
We offer it in evidence.

DEFENDANT'S EXHIBIT 86.

Dated, Wichita Falls, Texas 1-25-1927 The City National Bank of Wichita Falls, Pay to the order of E. E. Scannell $137.85. This check is in full settlement shown hereon. Acceptance by indorsement constitutes receipt in full. 3 payments and interest on Marlborough lots.

Signed G. W. Peckham. Indorsed E. E. Scannell Perforated Paid 1-26-27 "3" (Stamped) Security National Bank, Clearing House Paid Jan. 26, 1927, indorsements guaranteed, Wichita Falls, Texas.

The Witness:

The check of February 7, 1927, $175.00, was to pay for landscaping, I am quite sure I gave Preston a check for that amount, however, that does not seem to be my signature on the back of that check. I would not be able to say I got the money. It says, "Deposited to the City National Bank of Wichita Falls, to the credit of E. E. Scannell." I guess I got it, it was paid for that purpose, I am quite sure.

Mr. Boone:

Offer it in evidence.

878 DEFENDANT'S EXHIBIT 87.

Dated, Wichita Falls, Texas Feb. 7, 1927 No. .... The City National Bank of Wichita Falls, Texas, Pay to the order of E. E. Scannell, $175.00. This check is in full settlement as shown hereon. Acceptance by indorsement constitutes receipt in full. To pay Preston for landscaping. Signed by G. W. Peckham. Indorsed Deposited In The City National Bank of Wichita Falls, Wichita Falls, Texas, to the order of E. E. Scannell. Perforated Paid 2-7-27.

The Witness:

On March 27, 1927, George Peckham gave me a check for $27.00, it says, "For trees in Marlborough." I am quite sure that is a check for half of the purchase price. I gave one double that amount.

Mr. Boone:

Offer it in evidence.

DEFENDANT'S EXHIBIT 88.

Dated, Wichita Falls, Texas 3-27-1927 No. .... The City National Bank of Wichita Falls, Texas, Pay to the order of E. E. Scannell $27.00, This check is in full settlement as shown hereon. Acceptance by indorsement constitutes receipt in full. Trees in Marlborough. Signed G. W. Peckham. Indorsed E. E. Scannell. Perforated Paid 3-25-27 "3" (Stamped) Security National Bank Clearing House Paid Mar. 22, 1927. Indorsements guaranteed, Wichita Falls, Texas.

879 The Witness:

On June 14, 1927, a check in the amount of $169.14. Says, "Paving Avenue L lots," $169.14, and that is a part of the pavement payment on the block of lots we had at the Catholic cemetery. I gave my check for twice that amount, I am quite sure and I will try to find it.

Mr. Boone:

We offer it in evidence.

DEFENDANT'S EXHIBIT 89.

Dated, Wichita Falls, Texas, 6-14-1927 No. .... The City National Bank of Wichita Falls, Pay to the order of E. E. Scannell, $169.14. (Paving on L lots) Signed by G. W. Peckham. Indorsed E. E. Scannell. Perforated Paid 6-14-27. "8".

The Witness:

On November 1, 1927, George Peckham gave me his check for $147.24, and it says three payments and the interest to date on Marlborough lots. I am quite sure that that is half of a payment that was made on the lots that we have in the Marlborough Addition, and the books of the Marlborough will reflect the payment of twice that

much, I gave my check for twice that amount I am quite sure, to the Marlborough Addition.

Mr. Boone:
We offer it in evidence.

DEFENDANT'S EXHIBIT 90.

Dated, Wichita Falls, Texas 10-1-1927 No. .... The City National Bank of Wichita Falls, Pay to the order of E. E. Scannell, $147.24, 3 payments & int to date on 3 Marlborough lots. (Signed) G. W. Peckham Indorsed
880 E. E. Scannell, Perforated Paid 10-2-1927 (Stamped) Security National Bank Clearing House, Paid Oct. 3, 1927. Indorsements guaranteed, Wichita Falls, Texas.

The Witness:
On October 1, 1927, George Peckham gave me a check for $39.00, and it says, for hydrants in Marlborough. After we planted those trees, we had to water them, so we had to put in some hydrants and this is a check given for his half interest in the expense. I have my one-half and I am quite sure my check will show double the amount.

Mr. Boone:
We offer it in evidence.

DEFENDANT'S EXHIBIT 91.

Dated, Wichita Falls, Texas, 10-1-1927 No. .... The City National Bank of Wichita Falls, pay to the order of E. E. Scannell, $39.00. Hydrants in Marlborough. Signed by G. W. Peckham. Indorsed E. E. Scannell. Perforated Paid 103-1927 Security National Bank Clearing House Paid Oct. 3, 1927. Indorsements Guaranteed. Wichita Falls, Texas.

The Witness:

On October 3, 1927, George Peckham gave me his personal check for $200.00, it shows payment on Marlborough lots. I am quite sure that that is his half of the payment of $400.00 that should reflect on the Marlborough books. I am quite sure I paid double that amount, and I will attempt to get every one of these checks.

881 Mr. Boone:

We offer it in evidence.

DEFENDANT'S EXHIBIT 92.

Dated, Wichita Falls, Texas, 10-3-1927 No. ..... The City National Bank of Wichita Falls, pay to the order of E. E. Scannell $200.00, signed G. W. Peckham. Payment on Marlborough Lots, indorsed E. E. Scannell. Perforated paid 10-3-27. (Stamped) Security National Bank Clearing House Paid Oct. 4, 1927. Indorsements guaranteed. Wichita Falls, Texas.

The Witness:

On March 21, 1928, George Peckham gave me his check for $403.63. That is on the Marlborough lots, and I am quite sure that that is half of a payment that we made on that string of lots in the Marlborough Addition. I gave double the amount. I will make an attempt to get every one of these checks.

Mr. Goone:

We offer that in evidence.

DEFENDANT'S EXHIBIT 93.

Dated, Wichita Falls, Texas, 3-21-1928. No. ..... The City National Bank of Wichita Falls, Pay to the order of E. E. Scannell $403.63, on Marlborough lots. Signed G.

W. Peckham, indorsed E. E. Scannell. Perforated Paid 3-22-28. (Stamped) Security National Bank Clearing House. Paid Mar. 22, 1928. Indorsements guaranteed. Wichita Falls, Texas.

The Witness:

These last checks total $1,298.86, and I will at-
882 tempt to get my records and explain each of them.

The records will show in whose name the lots next to the Catholic Cemetery were taken, we sold them off. Mr. Peckham was giving me his check as late as 1927, I believe the last one in 1928, I think I still had two in George Peckham's name when he died, and we got title to them. I don't know that I conveyed them to him, we were partners on that deal, but I think that the conveyance was made from Mr. Kemp to George Peckham. The lots in the Marlborough Addition were in my name, I had a home built on one and a half of them, and I conveyed them at different times. I will get my records with reference to the lots of the Marlborough Addition. George Peckham built on three of them. The Marlborough books will reflect those transactions. We divided that property before George Peckham died. I did not owe George Peckham anything.

The check of June 16, 1926, for $974.15, says final payment lots 1 and 2, block 7, Marlborough Addition, and lots 1 and 2 in block 7, I presume, are the lots on which George Peckham built his home. The memorandum on the bottom of this check looks like it is in my handwriting, and I imagine was put there when the check was delivered to me. It is not in George Peckham's handwriting, it is in pencil. The balance of the check is in ink, in George Peckham's handwriting. I probably put that on there while I was sitting right in front of Mr. Peckham.

Mr. Boone:

We offer the check in evidence and ask that it be photostated.

883 DEFENDANT'S EXHIBIT 94.

(Check) Wichita Falls, Texas, 6-15-1926. No. ..... The City National Bank of Wichita Falls. Pay to the order of E. E. Scannell $974.15. (Signed) G. W. Peckham. Final payment lots 1, 2 and 7, Marlborough Add. (Perforated) Paid 6-16-26. Indorsed E. E. Scannell.

The Witness:

On June 28, 1926, check for $821.97, shows paving on Lots 1 and 2 in block 7, Marlborough Addition, and that is the paving on payment made on two lots on which his home is built. I feel quite sure this paving was being done about that time, and I made the payment and this was clearing it up, for his part payment on the lots on which he built his home. I don't know whether my check would be double that amount or not. You see, that is on the two on which he built his house, if he paid the full amount of that other check, the chances are that is just what was due. I paid for the pavement in front
884 of my lot, I will endeavor to get my check.

Mr. Boone:

We offer the check in evidence, Defendant's Exhibit No. 95.

DEFENDANT'S EXHIBIT 95.

Dated, Wichita Falls, Texas, 6-28-26. The City National Bank, Wichita Falls, pay to the order of E. E. Scannell, $821.97. This check is in full settlement as shown here. Acceptance by indorsement constitutes receipt in full. Paving on lots 1-2 blk 7, Marlborough Addition. (Signed) G. W. Peckham, E. E. Scannell indorsed the check. Perforated Paid 6-30-26. (Stamped) Security National Bank Clearing House Paid Jun 30, 1926. Indorsements guaranteed, Wichita Falls, Texas.

The Witness:
On November 10, 1926, George Peckham gave me a check for $2,500.00, I imagine that was on his home in the Marlborough Addition.

Mr. Boone:
We offer the check in evidence.

DEFENDANT'S EXHIBIT 96.

Dated, Wichita Falls, Texas, 11-10-1926, No. ..... The City National Bank of Wichita Falls, Texas "8." Pay to the order of E. E. Scannell $2,500.00. Signed G. W. Peckham. Indorsed E. E. Scannell. Perforated Paid 11-12-26. On house.

The Witness:
On November 24, 1926, George Peckham gave me another check for $1,750.00, another payment on the house, along with the other three. This house
885 did not cost more than $16,500.00. This looks like an additional amount that was paid for the tile roofing.

Mr. Boone:
We offer it in evidence.

DEFENDANT'S EXHIBIT 97.

(Dated, Wichita Falls, Texas, November 24, 1926, No... The City National Bank of Wichita Falls. Pay to the order of E. E. Scannell, $1,750.00.

This check is in full settlement as shown hereon. Acceptance by indorsement constitutes receipt in full. On house. Signed G. W. Peckham, indorsed E. E. Scannell. Perforated paid 11-26-26.

The Witness:

That makes four house checks. I don't know how much more the house cost. I had very little to do with it, other than that the thing passed through my name as a convenience, the Marlborough Addition, as to publicity, to show that there was houses being built out there by others than the owners of the property. I will endeavor to get my checks where I spent that $16,500.00. On February 19, 1927, there is another check George Peckham gave me for $4,370.40, another payment on the house, it says, "Marlborough House." I guess that is the final payment, it cost more than $20,000.00, he told me at one time it cost more than that, he said it cost him nearly $24,000.00.

Mr. Boone:

We offer the check in evidence.

886 DEFENDANT'S EXHIBIT 98.

Dated, Wichita Falls, Texas, 2-19-1927. No. ..... The City National Bank of Wichita Falls. Pay to the order of E. E. Scannell, $4,370.40. This check is in full settlement as shown hereon. Acceptance by indorsement constitutes receipt in full. On Marlborough House. Signed G. W. Peckham. Indorsed E. E. Scannell. Perforated paid 2-23-27. (Stamped) Security National Bank Clearing House Feb. 23, 1927. Paid. Indorsements guaranteed. Wichita Falls, Texas.

The Witness:

On that house he gave me checks totaling, altogether, $20,970.00. I could not say that on January 13, 1927, my wife and I executed a deed to George Peckham, recorded in volume 279, page 50, Wichita County, Texas, and reciting that I had only paid $13,500.00 on this house.

Mr. Boone:

We offer in evidence the deed, Volume 278, page 50, deed records of Wichita County, Texas, which recites.

$13,500.00 cash paid to E. E. Scannell and $12,000.00 worth of notes.

(Marked "DEFENDANT'S EXHIBIT 99" and appearing in this record as Defendant's Exhibit 109, as hereinafter shown.)

The Witness:

I do not know that there was any difference between the $16,000.00 and the $13,500.00; all the payments I ever got were turned over to my account to the building of that house. I did not know I signed a deed on February 14, 1929, to George Peckham for that amount.

887 I want to refresh my memory a little bit on this thing. I notice on this check for $8,100.00 an item of "insufficient." Since I recall it, I am not sure just how it was done, but George went off hunting, or to Colorado, along in August, and it seems to me that he lacked a certain amount of money having enough in his account to pay that check. I remember shuffling around here with Mr. Basham quite a little bit. I had already given one check on that house and the other was due and I had given two of them and the check for $8,100.00 was insufficient, and something was done down there, I think the bank carried him, I am not quite sure about that, I think the bank can tell you more about that than I can. I think the contract on that house recited that there should be four payments of $4,250.00 each. If you will get the deed it might help me to refresh my memory as to the details of the transaction. George Peckham trusted me and I trusted him. I don't know who I transferred those notes to. I don't know whether the notes for $12,000.00 were made payable to me or not. I transferred the property out of my name to somebody, I don't remember who. I do not remember transferring the notes to the Empire Mortgage Company on April 20, 1927. I am quite sure there was no shortage in that house deal, as far as I am concerned.

I begun building my house about November 16, 1927. I had some of the money with which to build it and borrowed some money. I will endeavor to give you my bank account of November, 1927 also from
888 1923 until this lawsuit was filed.

I got some money from the Pan-American Life Insurance Company at New Orleans to build my house.

Check No. 455, is the check of the Wichita Royalty Company, dated January 5, 1926, to E. E. Scannell, for $200.00, signed Wichita Royalty Company, by E. E. Scannell, and so indorsed; that was my salary for December, 1925.

I have a check here, No. 462, for $1,200.00, being a check drawn on Wichita Royal Company's account in the City National Bank of Wichita Falls, signed Wichita Royalty Company, by E. E. Scannell, and indorsed by E. E. Scannell. I got that money temporarily about that time Mr. Hopkins, who was the collector in Dallas, sent a young man up here and told him to collect some stamp taxes, capital stock taxes, and he came over there, he was a young fellow, and rearing to make a name for himself. His name was Lillibridge I will never forget the fellow. He had a Charlie Chaplin mustache, and he was hot to make a showing. We came over and talked to Mr. Crouch and Mr. Sheppard, told him what was in the air, that this fellow was pushing us. They said to get the money out of the bank as quick as we could, because he was sure to jump on it. We drew the balance out of the account at that time for a few days until we could get a chance to figure with him. His idea was to tie up the money and then figure. I probably put that $1,200.00 in my personal account, I will be glad to get it for you if I can locate it. I put this money back that year—
889 shortly thereafter it was replaced in the bank.

I don't know exactly what date it was replaced. Check No. 462 shows, to advance on salary for 1926.

Mr. Boone:
We offer the check in evidence, Defendant's Exhibit 100.

DEFENDANT'S EXHIBIT 100.

Wichita Royalty Company, Wichita Falls, Texas, No. 462, January 16, 1926. "18." When properly indorsed pay to the order of E. E. Scannell, $1,200.00. To the City National Bank, Wichita Royalty Company, Wichita Falls, Texas. By E. E. Scannell for trustee. Indorsement hereon by the payee constitutes acknowledgment of full payment of the items listed on accompanying remittance statement. No other receipt required. Indorsed E. E. Scannell. Perforated Paid 1-18-29.

The Witness:
The next check is No. 463, the same date, this check was cashed, 462, there was another check written by me, signed Wichita Royalty Company and payable to E. E. Scannell for $300.00, and indorsed and paid the same day, for the same thing.

Mr. Boone:
We offer it in evidence.

DEFENDANT'S EXHIBIT 101.

Wichita Royalty Company, Wichita Falls, Texas, January 18, 1926. No. 463. When properly indorsed pay to the order of E. E. Scannell $300.00. To Security
890 National Bank, Wichita Royalty Company, Wichita Falls, Texas, by E. E. Scannell, for trustee. Indorsement hereon by the payee constitutes acknowledgment of full payment of the items listed on accompanying remittance statement. No other receipt required. Indorsed E. E. Scannell. Perforated paid 1-18-26.

The Witness:
That voucher was for salaries to advance on salaries, 1926, $300.00.

The next, dated January 19, check No. 462, for $400.00, signed Wichita Royalty Company, payable to E. E. Scannell, endorsed by E. E. Scannell, was for the same thing. I imagine that those checks were all cashed at the same time. You will notice that one of these was drawn on the account that we had at the City National Bank and the other on the account that we had at the Security National Bank, both cashed on the same day, I couldn't say about that. Check No. 463 was drawn on the Security National Bank, and check No. 462, on the City National Bank I could not tell you whether the $1,200.00 drew out the entire balance in the City National Bank or not, nor could I tell you whether the $300.00 drew out the entire account in the Security National Bank. It is true, on January 16, I wrote a check to draw out my balance of the bank, to keep it from being garnisheed and I did not cash it until the 18th; on the 19th I wrote a check for $400.00 and did not cash it until the 20th of the City National Bank. I will get the record and see how much money we had in the City National Bank

891 Mr. Boone:
We offer the check in evidence.

DEFENDANT'S EXHIBIT 102.

Wichita Royalty Company, Wichita Falls, Texas, No. 464, January 19, 1926. "18" "17" When properly indorsed pay to the order of E. E. Scannell $400.00 To the City National Bank, Wichita Royalty Company, Wichita Falls, Texas, by E. E. Scannell, for trustee. Indorsement hereon by the payee constitutes acknowledgment of full payment of the items listed on accompanying remittance statement. No other receipt required. Indorsed E. E. Scannell. Perforated Paid 1-20-26.

The Witness:

I have my records before me, and can explain these checks, beginning with 462, 463 and 464. It shows here that on No. 157, from the memo, we deposited back, E. E. Scannell, salary advances to Security National Bank, $700.00, February 2, 1926. As to these three checks, we asked the City National Bank to give us the deposit slips of all the deposits they have, and they have not done it. On the City National Bank it shows, in the Security, that we deposited $700.00 on February 10, No. 158, our cash memo. There was $1,200.00 deposited to the City National Bank. I will have to check further, and $3,287.22 on the same cash memo, which is the deposit of that money back, it says, E. E. Scannell, salary advance on the books. I had all of the money there was in our account out at that time, and held it, and that is the re-
892 placing of it, as I remember. I presume the check for something over three thousand dollars is a cashier's check, it shows the deposit to the City National Bank was $3,287.32, so that when the money was returned on cash memo 158 to the account, it was $3,287.22 deposit and also check for $1,200.00. This memo 155 is pipe line runs, oil runs, telephone account, and others. On check No. 158, it says, E. E. Scannell salary advance, $3,287.32, and it refers on the ledger to C. M. R. and 155. It is possible that there is a cashier's check issued to that amount to us, I will attempt to get it for you, and that is the return of the money.

Mr. Boone:

We offer in evidence the original record of the cash received, memo No. 158, being Exhibit No. 103, and the same book memo, No. 155, being Exhibit 104, which the witness has testified to, concerning the two deposits of $3,287.22, and ask that both instruments be photostated.

(Marked "Defendant's Exhibit 103 and 104," as follows:)

893 DEFENDANT'S EXHIBIT 103.

No. 158.

Original record of cash received February 10, 1926.
From oil runs and E. E. Scannell.
Account:

Description of Cash Items.

Received in payment of:

Transfer fees	2.25
E. E. Scannell, salary advances	1200.00
E. E. Scannell, salary advances	3287.22
Oil runs	2593.93

The above listed cash items received by me and passed to R for deposit.

DEFENDANT'S EXHIBIT 104.

No. 155.

From Pipe Line Cos. January 21, 1926.
Account: Description of cash items.
Received in payment of:

Oil runs	3283.02
(E. E. Scannell, Trus.) Telephone account	2.30
Transfer fees	1.90
	3287.22

The above listed cash items received by me and passed to R for deposit.

894 The Witness:

I don't know how much money we had in the City National Bank when we drew out our account to keep the revenue collector from garnisheeing it, I will have to find out. The record here shows on January 15, 1926, we had $2,408.53; on January 18, we had $2,406.03. On January 20, we had $36.96. We had $436.96 at the close of business January 18, and on the 19th there was a $400.00 withdrawal. On January 18, it shows $15,000.00 deposited, which I presume is a loan. The bank account shows that we gave a check for $15,769.07, so it was in and out the same day. I do not have the Security National Bank Account. I think all of these things were in the record in the first trial. The suit was filed in 1931, and I have been working on it most of the time since then. We have had a special auditor and I have been working on this case for about three months. Our auditor is Mr. Sheppard. Many of these things we have not been able to locate. I did not know the questions you were going to ask.

On January 30, 1926, there was some oil payments for oil runs, the first half of January on the Stephens Royalty given to the Wichita Royalty Company by G. W. Peckham for $1,235.00, also a cash memo covering check for $1,103.13—I am unable without the deposit slip, to identify these deposits in the bank individually.

Mr. Boone:

We offer in evidence these two checks from George Peckham to Wichita Royalty Company, marked "Defendant's Exhibits 105 and 106 as follows:)

895 DEFENDANT'S EXHIBIT 105.

Wichita Falls, Texas, dated 1-30-1926. No. ..... The City National Bank of Wichita Falls pay to the order of Wichita Royalty Co., $1235.99. Runs first half January, Stephens Royalty. (Signed) G. W. Peckham. (Stamp-

ed) for deposit only, G. W. Peckham as Trustee, Wichita Royalty Company, 509 Security National Bank Building, Wichita Falls, Texas. (No penned indorsement appears.) Perforated paid 2-10-26.

DEFENDANT'S EXHIBIT 106.

Dated, Wichita Falls, Texas, 2-18-1926. No. .... City National Bank. Pay to the order of Wichita Royalty Company $1,103.13. Last half January, Stephens Royalty. (Signed) G. W. Peckham. (Stamped) For deposit only, G. W. Peckham, as Trustee Wichita Royalty Company, 509 Security Nat'l Bank Bldg., Wichita Falls, Texas. (No penned indorsement appears.)

The Witness:

I handled the Wichita Royalty Company business under George Peckham's direction. I drew out their money at his request, and held it at his request. I wrote the check and indorsed it, I had authority at the bank to write checks on the Wichita Royalty Company. George Peckham trusted me. From 1923 until the da[illegible] that Mr. Peckham died, I wrote most of the checks on the Wichita Royalty Company, however, before any checks were written that amounted to anything. Mr. Peckham
896 knew all about it, and it was done at his request.

George Peckham was rather prominent and rather active in this community, a good business man, and had the reputation of being honorable. I never heard anyone question George Peckham's integrity or honesty prior to the time he died. I do not question his honesty in regard to this, the record will reflect for itself—the records reflect fraud. I have accused George Peckham of not making a delivery of a deed to me to the Marlborough Addition. I have testified several times that George Peckham signed that deed and acknowledged it before me, and gave me verbal instructions only pertaining to it. He never gave me any written instructions in

my life. George Peckham wrote this letter which you now hand me, that is the first time I ever recall having seen it. If I have the original of this letter in our file, I will hunt it up. I will go and get the letter right now and Mr. Carson may go with me.

Mr. Boone:

We offer the letter in evidence and ask that it be photostated.

DEFENDANT'S EXHIBIT 107.

897 Wichita Royalty Company

509 Security National Bank Building

Wichita Falls, Texas, April 10, 1926.

Wichita Royalty Company,
406 Staley Building,
Wichita Falls, Texas.

Gentlemen:

This is to certify that you are the owners of an undivided half interest in the Marlborough Addition (consisting of 252 lots) to the city of Wichita Falls, subject to 1/2 of six notes for $7,738.50 each, payable in 1, 2 and 3 years; also subject to 1/2 of 6 notes for $909.00 each, payable in 1, 2 and 3 years.

While one-half of Marlborough Addition belongs to Wichita Royalty Company it is held in my name because of the fact that the other owners would not care to be associated with a stock company, but are willing to be partners with me as an individual. I will continue to hold this property in my name, but am giving you this letter showing your interest so that in the event anything should happen to me you will be protected.

I am also enclosing a deed to you for your interest, which you can file for record if it becomes necessary.

Yours very truly,

(Signed) G. W. PECKHAM.

(On bottom of letter):

6 notes	7,738.50	46431.00
6 notes	909.00	5454.00
		2/51885.00
		$5942.50

898 The W ..ess:

I have that letter now, I found it in an envelop in the Marlborough file. It is dated April 10, 1926, and has been in my possession since that time. Those figures on this letter are mine, and I possibly wrote those figures on there at the time I got the letter. That is probably on Journal entries 27 and 28, it is probable that these journal entries might have been made out from that information. George Peckham made a delivery of that deed to the company, not to me. I have accused him of fraud. In this letter in the last paragraph he says, I am enclosing a deed to you for your interest, which you can file for record if it becomes necessary. I had forgotten all about this letter. I still make my testimony just as I made it in the first place, that the deed was given to me not to file but to hold, the letter says, "if anything should happen to me, you will be protected." When I testified this morning, I did not know that this letter was in my possession. That letter was kept with the deed in the envelop, I think they have been kept together all the time. I have not had that deed since the last trial of this case, when I brought it to the courthouse. I do not expect I would ever have told you about this letter if you had not found it, because I didn't know anything about it, I had forgotten all about it. It is written on the stationery of the Wichita Royalty Company, and I suppose the letter

was delivered to me along with the deed, when I took George Peckham's acknowledgment, but I would not say for sure. If I had known about this letter, I would have testified about it, I am not trying to hide anything, I am only looking after the interests of the stockholders of the Wichita Royalty Company to the best of my ability and that is what I told Mr. Harrell in the first place. I am contending that there was no delivery of this deed. This letter does not say that the deed could be put of record any time it became necessary.

899

Mr. Rogers:

We make the further objection, in addition to the objections carried forward through the testimony, as to the Marlborough Addition, with respect to delivery, primarily, for the obvious reason that there could be no delivery of a deed between G. W. Peckham and the Wichita Royalty Company, because there was no one to accept the same, except the grantor therein. No other person having any authority of any kind or character to bind the trust by the acceptance of a deed, and the trustee himself, the grantor in the deed, being wholly without power to bind the trust in the acceptance of a deed himself, concerning subject matter foreign to the limited powers given by the declaration of trust which chartered its powers. And for the further reason that it is now apparent from the letter itself, being Defendant's Exhibit 107, that the grantor did not intend that the deed should be delivered, nor that title should pass unless and until he should die, and in no event prior to his death or prior to his subsequent instruction, should the deed be delivered, and as a matter of law, with his death, died, the effect of that deed, it not having been delivered prior to his death and it being impossible to deliver it after his death, in order to find G. W. Peckham.

900

(Which objection was by the Court overruled, to which the defendant then and there excepted.)

The Witness:

This letter does not say anything about Mr. Peckham's death, it is addressed to the Wichita Royalty Company and signed by George Peckham. I should have known about this letter, but I had forgotten about it being in existence. I never told anybody about the deed until after George Peckham's death. After this deed was executed, it was available in the records of the Wichita Royalty Compnay and George Peckham could have gotten it at any time he wanted to. All of the books and records of the Wichita Royalty Company were in my custody under George Peckham's direction. I recited on our records that the Wichita Royalty Company owned all of the Marlborough Addition. The notation on that letter is figuring out our half interest full amount of the payment of $36,000.00, which was for the entire addition, and the note, $5,454.00, our half of it—I mean by our half, Wichita Royalty Company. I couldn't say for sure, but the deed was turned over to me with this letter, I think, for safekeeping, I kept all of the records. The records show that there was some deeds we did not have. As I recall, after George Peckham's death, they tried to get me to sign a deed, but I don't think I ever did, probably I did, and did not turn it in—I signed it and acknowledged it and held it in my desk, that was about the time I begun to wake up and find out what was being done to me.

I signed this on March 29, 1930, and acknowl-
901 edged it on the same day, before J. R. Terrell, a notary public, who worked for Bill Peckham and Ross Robertson. (Plaintiff's Exhibit No. 47.)

I never did think the Marlborough Addition looked "pretty good," after the acquisition of it by this deed of April 10, 1926. I bought lots out there because George Peckham wanted me to, he thought I would make some money.

Mr. Rogers:

So there will be no mistake about the record, under the agreement, the objection heretofore made with respect

to the Marlborough Addition, and the W. H. Peckham transaction in respect to it, I want to make the same objection in respect to any transaction or transactions which Mr. Scannell as trustee, with he may have had, and it may be agreed that those objections may apply?

Mr. Boone:
Yes.

Mr. Humphrey:
That is all right.

The Witness:
The Marlborough Addition belonged to the Wichita Royalty Company as far as I knew. I don't know what the rights were as far as the legal end of it was concerned. I knew that they had a deed, and that they had spent lots of money out there—whether they had a deed or not, I knew they had a string to it, the deed was never recorded. I feel quite confident I followed the instructions that were given to me, had I not been used to doing that. I don't think I could have worked for George Peckham, he was not that kind of a fellow. After George Peckham died and I qualified as trustee, I came
902 to Mr. Harrell and asserted ownership for the Wichita Royalty Company for a half interest in the Marlborough Addition and thereafter paid money out of the funds of the Wichita Royalty Company to carry forward the Marlborough Addition.

Q. Accepted stock of the Texas Investment Company, didn't you?

Mr. Rogers:
We object to that, because a trustee, under the declaration of trust here involved is without power or authority to bind the shareholders by the acceptance of stock in a corporation; particularly in respect to a corporation

which has chartered purposes and actual negotiations, relate not to oil and gas, but solely to a suburban venture.

The Witness:

I accepted that stock, and sat in the meetings of the Texas Investment Company on behalf of the Wichita Royalty Company, and voted. The records reflect what I did better than I can tell you, because I didn't know much about what it was all about, I was not associated with it close enough to know what was going on and what had been done. I kept books in so far as our part of it was concerned. The Marlborough Addition was an outside project handled by Mr. Peckham in his office and Mr. Harrell in the bank, and the men he had working for him, and I knew nothing about it, outside of the entries that directly affected the bank account of the Wichita Royalty Company. I set up the books and started them off for the Marlborough Addition, when I say

903 I, I mean E. E. Scannell, and the kid that worked for me came over at night time and set it up for me, under my direction. They didn't have any kind of records they could tell anything about, and he wanted to see something about it, so that he could tell a little about what was being done. I think that was soon after the Marlborough property had been bought—I knew then the situation concerning the Marlborough purchase. The books will reflect when they were started. It went along for a time under the Peckham boys, Mr. Harrell and Mr. Kemp. My impression is that we probably did that long before the Wichita Royalty Company came in, but I couldn't say for sure. I kept what each item was spent for, in so far as it was reflected on the books. The journal entries, was some information I acquired from Mr. Peckham, I would go and see him and he would tell me what checks to make and what to charge them, too. I don't know whether those entries are the truth or not, I don't know what they paid out, I don't know how much they paid out for water, lights and gas. I had no reason to doubt George Peckham, I am quite sure

that he told the truth in some respects—he probably did not exactly not tell me the truth but he did not detail it, in other words. I cannot give you any specific instance when George Peckham did not tell me the truth. The records reflect fraud on the part of George Peckham. I had forgotten all about this letter, but if anybody had gone to the records, it would have been there with my figures on it. In regard to the expenditure of our half interest on the Marlborough Addition for the Wichita
904 Royalty Company, I kept our records showing the expenditure throughout those years, until George Peckham died, showing that we owned a half interest in the Marlborough Addition. Our records were not open for inspection to the stockholders, they could have talked to Mr. Peckham, but none of them did. I expect Mr. Peckham would have let them see the records if they had asked. No stockholder was ever denied the right to see the records, that I know, after I became trustee. About the first of November or December, 1929, the records were eligible for the stockholders to see. I did not deny any stockholder the right to see where we were asserting ownership in the Marlborough. I thought we owned a half interest in the Marlborough Addition.

At first, I did not employ a lawyer after I became trustee. I had absolute confidence in Mr. Harrell and Mr. Humphrey in what we were trying to do, and Bill Peckham in what we were trying to do, to keep this thing quiet because George Peckham was short, and get it straightened up, and then as far as I could see the records would be clear. I certainly do tell the Court that George Peckham was short, and the records so reflect; and I file claim in that respect. I was not personally short a cent with George Peckham. As to the $34,000.00 worth of checks you exhibited to me this morning, I can show what every check was for, it was either a bona fide interest where I had paid in and received back my share of the profits, or it was payments on property in which we were
905 interested together. I did not keep a personal set of books, I have never had enough business

to keep one. I have letters or something to show everything I did. I have not had access to George Peckham's files. We each shared property in our names for the other, and switched it back and forth, sometimes when he made a deal I was interested in it, he gave me a letter and sometimes he didn't. I also took property in my name and George Peckham owned half of it, and he did the same with reference to me. That was common in Wichita Falls from 1923 to 1929, among people who lived here.

Many of these checks that we accused George Peckham of in the first trial, have been washed out, and we gave credit for all that did wash out. Check No. 427 for $5,500.00; it covers the purchase of property which we tendered back. The $1,500.00 we got back. We accused George of getting that $5,500.00, and he got it, according to the records, made payable to the City National Bank and deposited to G. W. Peckham's account. As to the $1,500.00, our cash memo dated November 10, 1925, shows that the money was refunded by George W. Peckham. The entry shows, from G. W. Peckham, November 10, 1925, cash memo No. 148, $1,500.00, and reads, "money refunded on producing royalties." It is shown by check No. 427. No. 427 was the check for $5,500.00, but no property was delivered for the $1,500.00 item, and it was returned to the company. Our deposit showed on November 10, 1925, where George Peckham's check was given for $1,500.00. The $1,500.00 of that amount paid
906 for the purchase of the east half of section 4, B. B. & C. R. Co. Survey, Certificate 692, 320 acres, Archer and Young Counties, Texas, Property No. 82. I think the deed to that property has been offered in evidence, from B. L. Fain, and I think the deed has been in our possession since 1925. It was a producing royalty. I think that is among that which has been suspended. I am not sure that we have collected any of it lately. I did not go to George Peckham and ask whether he paid $1,500.00 for it, I had no access to his personal checks at all. I imagine this is the check of B. L. Fain for that date.

it says, Kunkle Royalty, $1,500.00. The date of the deed, October 9, 1925, paid on this date, the date of this check is November 12, 1925. The deed was filed for record November 12, 1925, Volume 116, page 140, the same date the check was given. George Peckham paid out that money.

Mr. Boone:

We offer the check in evidence, Defendant's Exhibit 108.

DEFENDANT'S EXHIBIT 108.

Dated, Wichita Falls, Texas, 11-12-1925. No. .... Pay to the order of B. L. Fain, $1,500.00. Sale of Kunkle Royalty. (Signed) G. W. Peckham. Indorsed B. L. Fain. Perforated paid 11-13-1925. (Stamped) Security National Bank Clearing House. Paid Nov. 13, 1925. Indorsements guaranteed. "3" Wichita Falls, Texas.

907 The Witness:

We have the property. $2,500.00 was property No. 81, to purchase one-fourth of the royalty on the east thirty acres of a seventy-one acre tract of land out of the D. Milligan Survey, Callahan County, Texas. That deed was offered in evidence. Here is the original deed that came from A. J. Mathis and wife, L. Mathis, consideration $2,500.00, the deed recites $2,250.00. On that date there is a check of George Peckham for $2,252.25. The date of the check is October 17, 1925. The deed was recorded on October 23, and filed for record on October 23, 1925. $2.50 worth of Revenue stamps. That is George Peckham's check. Dated October 20, and paid October 23. The deed was filed for record October 23, the same date the revenue stamps were paid. C. A. Rogers is an oil man here in town, he was connected with the United Royalties. The notation on the check of George Peckham looks like it says, "Commission on Cross Plains

Royalty." We have no other Cross Plains royalty. This commission of $225.00 was paid by George Peckham, I suppose. I don't know who examined the title. I never saw the check of November 3, 1925, $71.00, to E. C. DeMontel. He was Mr. Peckham's personal lawyer, the company did not have much use for attorneys on titles, they were furnished on properties that were purchased. It looks like from those checks and this deed that George Peckham accounted for every penny of that $5,500.00, or rather, it looks like that is the total amount of it. Bill Peckham refused to let me look at George Peckham's books, we were never able to get anything out
908 of that office. Those checks and that notation thereon are signed by George Peckham, and supposedly that accounts for the $5,500.00.

Mr. Rogers:
We object to that as a conclusion of law.

Q. And you accused your best friend of fraud in 1931, setting up this item as one of the fraudulent transactions, didn't you?

Mr. Rogers:
We object to that, because it is the law that he who deals in a dual capacity between himself as an individual and himself as trustee, thereby commits a wrong.

The Witness:
Yes, sir.
In the last pleading we filed, we tendered this item back. I did accuse him of fraud in that pleading, so far as I could tell. We had no access to George Peckham's checks, or any part of them, and knew nothing about them. I don't think the Callahan ever produced anything, we have received oil runs off of the other one. I will let you see the Kunkle royalty.

Mr. Humphrey:

We offer in evidence the deed from Scannell, as trustee, to the Marlborough Addition, marked "Plaintiff's Exhibit 47."

909 PLAINTIFF'S EXHIBIT 47.

Deed from E. E. Scannell, Trustee, Wichita Royalty Company to Texas Investment Company.

Consideration $10.00 and other valuable consideration.

Conveying the following land:

Tract No. 1:

Being 51.59 acres of land out of the Cyrus Eakman Survey and described by metes and vounds as follows, to-wit:

Beginning at a stake for the common corner of Blocks 17, 18, 37 and 38 of Highland Irrigation Subdivision, which stake is 1076.2 feet west and 32.37.6 feet South from the Northeast corner of Cyrus Eakman Survey; thence West 1076.2 feet, a stake for the Southwest Corner of Block 47 of said Irrigation Subdivision; thence South 115 feet to a stake in center of Avenue "X"; thence North 82 degrees and 40 minutes west with center line of Avenue "X" 391.2 feet to a stake in center of Taylor Street; thence North 7 degrees and 20 mins. East with center line of Taylor Street 890 feet to a stake; thence North with center line of Taylor Street 641.3 feet to a stake in North line of Avenue "U"; thence East 30 feet to a stake for the

910 Southwest corner of lot eight (8) block eleven (11) Southside Addition; thence North with the West line of said lot eight (8), 134 feet to a stake in South line of Lot four (4) block thirty-two A (32A) Highland Addition; thence South 82 degrees and 40 minutes East 72.4 feet to an iron pipe in center of Taylor Street; thence North 7 degrees and 20 minutes East with center line of Taylor Street 30.3 feet to iron pipe under

fence; thence East 1194.5 feet to stake; thence South 155 feet to a stake for Southwest corner of Lot seventeen (17), Block nine (9), Southside Addition; thence East 50 feet to stake for Southeast corner of said lot seventeen (17); thence South along West line of Cotton Street 654.4 feet to a stake for Southeast corner of Block twenty (20) of said Southside Addition; thence East 6.8 feet to stake for Northwest corner of Block nineteen (19) and Northeast corner of Block thirty-six (36) of said Highland Irrigation Subdivision; thence South 809.4 to the place of beginning, containing fifty one and 59/100 (51.59) acres of land, and comprising lots ten (10) to sixteen (16) inclusive in Block nine (9); Lots one (1) to eight (8) inclusive in Block 10 & eleven (11); all of Block number thirteen (13); all of Block number fourteen (14); all of Block number fifteen (15); all of Block Number twenty (20); all of Block number twenty-one (21); and all of Block number twenty-two (22); all being out of the Southside Addition to Highland Addition to the City of Wichita Falls, Texas; and also comprising the following:

911 All of block number thirty-six (36); all of block number thirty-seven (37); all of Block number forty-seven (47); all of Block number forty-eight (48); all of Block number seventy-seven (77); and all of Block number seventy-eight (78); of the Highland Irrigation Subdivision according to the maps or plats duly recorded in the Deed Records of Wichita County, Texas.

Tract No. 2:

Being 6.06 acres of land out of the Cyrus Eakman Survey, and described by metes and bounds as follows, to-wit:

Beginning at a stake for the Northwest corner of Lot 2, Block 12, Southside Addition to Highland Addition; thence North 7 degrees and 20 minutes East 30 feet to a stake in center of Avenue "U"; thence East with the

center of said Avenue "U" 145.2 feet to a stake; thence South with center line of Taylor Street 611.3 feet to a stake; thence South 7 degrees 20 minutes West with the center line of Taylor Street 890 feet to a stake in center of Avenue "X", same being the Southwest corner of a tract of 51.59 acres heretofore deeded to parties herein named; thence North 82 degrees and 40 mins. West with center of Avenue "X" 190 feet to a stake; thence North 7 degrees and 20 minutes East with center line of Alley 920 feet to a stake; thence South 82 degrees and 40 minutes East 10 feet to a stake; thence North
912 7 degrees and 20 minutes East with West line of Lot 2, Block 23, of said Southside Addition 202 feet to a stake in center of Allen Avenue; thence North 82 degrees and 40 minutes West with center of said Allen Avenue 50 feet to a stake; thence North 7 degrees and 20 minutes East with the West line of Lots 23 and 2 Block 12 of said Southside Addition, 355 feet to the place of beginning, containing 6.06 acres of land and comprising the East one half of block Nos. 40-a and 41-a of the Highland Addition to the City of Wichita Falls, and also Lots 1, 2, 23 and 24, Block 12, and Lots 1 and 2 of Block 23, of the said Southside Addition; and,

Whereas, on the 30th day of September, 1929, G. W. Peckham, joined with J. T. Harrell and J. A. Kemp, conveyed to the Texas Investment Company of Wichita Falls, Texas, a private corporation, all of the following lands and premises situated in Wichita County, Texas, to-wit:

Lots Nos. 1, 2, 3, 4, 5, 6, 7, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19 and 23 out of Block No. 1; Lots Nos. 1, 2, 4, 5, 6, 8, 9, 11, 14, 15, 16, 17, 18, 19, 20, and the South one-half of 13, out of Block No. 2; Lots Nos. 2, 3, 4, 5 and 6 out of Block No. 2A; Lots Nos. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30 and 31 out of Block No. 3; Lots Nos. 1 to 3 inclusive and Lots Nos. 5 to 61 inclusive out of Block No. 4; Lots Nos. 1, 2, 3, 4, 5,

6, 7, 8, 9, 10, 11, 12, 17, 18, 20, 28, 29, and 30 out
913 of Block No. 5; Lots Nos. 12, 13, 14, 15, 16, 17, 20, the North one-half of Lot No. 22, and the South 40 feet of Lot No. 23 out of Block No. 6; Lots Nos. 10, 11, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25 and the South one-half of Lot No. 9 out of Blk No. 7; All of Block Nos. 8, 9, 10 and 11; All of the above described lots and blocks being out of the Marlborough Addition to the City of Wichita Falls, Texas, according to the plat of said Addition as recorded in the Plat Records of Wichita County, Texas; and

Whereas, at the time of the execution of said deed, the title to said properties had heretofore vested in the Wichita Royalty Company as to the interest owned therein by G. W. Peckham, but that the said Wichita Royalty Company consented to the execution of said deed aforesaid to the Texas Investment Company.

Duly acknowledged by E. E. Scannell, sole trustee of Wichita Royalty Company, before J. R. Terrell, Notary Public in and for Wichita County, Texas, on March 29, 1930.

Through and across the trustee's signature, the words "Void, Void" are written.

914 Mr. Rogers:

We object to that because the testimony affirmatively shows that the instrument they signed and acknowledged was never delivered, nor did it leave the grantor's desk, and never reached the possession of the grantee, nor any person other than the grantor, nor did the signing trustee have authority to sign the same. It was beyond the scope of his authority, was not embraced or covered by the declaration of trust creating its power, and the signature itself has written through it, (the words "Void," "Void."

(Which objection was by the Court overruled, to which the defendant then and there excepted).

The Witness:

I have the information you asked me for with reference to the Kunkle Royalties, property No. 82; the amount of royalties received up to September 3, 1926, we have collected $9,592.67, from a royalty which he bought and cost the company $1,500.00. At the time the property was purchased there was no production on it, the production has come in since the date of purchase, which was October 8, 1925, that is the date we give the check. We got oil to the amount of $1,327.60 on May 31, 1927. This record has been in our office, and production has been coming in since 1926, up to September 30, 1936. It is a fact that I accuse George Peckham of fraud in selling the company this property, that is one of the items. My recollection is that in the month of October, we got $4.05. This property was never sold—I don't recall whether it was sold under the deed of trust given to Guy Rogers
915 or not. I don't think I have that deed of trust given to Charley Black and Guy Rogers, I don't recall. I have had to haul these records around on account of persecution and the pressure that has been brought against me on the outside of the Courthouse in this case, and it has cost me practically everything I have. I will hunt these things up and get them together the best I can.

Mr. Rogers:

I will give you a copy of the deed to Guy Rogers and Charley Black and Ray Bland, if you wish it.

The Witness:

I did, on December 6, 1933, as sole trustee of the Wichita Royalty Company execute a deed of trust to Charles L. Black of Austin, Texas, and Ray Bland as the trustee, Wichita County, Texas, and Guy Rogers, we did that because we did not have the money to carry on this case.

That property was sold in August, 1934 by the trustee, certified copy having heretofore been offered in evidence, as Plaintiff's Exhibit 28, for $250.00. I don't know whether I have the voucher for $250.00 or not. Guy Rogers is my attorney, Ray Bland was trustee, he also works for Guy Rogers, or is associated with him. I presume Ray Bland got the $250.00 from Guy Rogers.

Q. Have you any property now that does not belong to Guy Rogers, as trustee for L. B. Rogers estate? I mean the Wichita Royalty Company?

Mr. Rogers:

We object to that as a conclusion. The evidence of title cannot be so testified to by a witness. In that
916 connection, I offer in evidence the disclaimer filed in the 89th District Court of Wichita County, in the suit between the parties here, wherein all interest in this has been disclaimed.

917 The Witness:

So far as I know, I have not paid Guy Rogers back for this. I don't know how much I have paid Guy Rogers or Charley Pla[illegible].

The consideration recited in the deed from my wife and myself to George Peckham dated February 14, 1927, covering lots 1 and 2, block 27, in the Marlborough Addition, says, for and in consideration of $25,500.00 to us paid and secured to be paid by G. W. Peckham, $13,500.00 cash, and balance of $12,000.00 to be paid according to the terms of certain installment or vendor lien notes this day made by G. W. Peckham, payable to the order of E. E. Scannell, in the principal sum of $12,000.00, payable in forty-eight monthly installments of $250.00 each and bearing interest at eight percent. I can't tell you much about those payments on that amount which you have asked me about, I told you this morning about the $8,000.00 check, you can find that out from the officers of the

bank, when the house was pretty well along it was transferred to George Peckham, and that is about all I can tell you about it. If was handled by him, it must have been all right, or he would not have accepted it, I am quite sure the mortgage company would not have loaned the money if it was not all right. Five days after I executed this deed I presume he gave me a check for $4,370.00, probably Mr. Allen had come to me for it, and I got it off of George Peckham and turned it in, I could not tell you about the details at this time. I do not have any of the records on that. You can get my bank state-
918 ment in the bank easier than I can get the checks, however, I will attempt to get them.

Mr. Boone:

We offer the deed in evidence, from Mr. Scannell to Mr. Peckham, marked "Defendant's Exhibit 109".

DEFENDANT'S EXHIBIT 109.

E. E. Scannell and wife to G. W. Peckham.

Consideration, $25,000.00, as follows:

Thirteen thousand five hundred dollars cash, and twelve thousand dollars in installment vendor lien notes, payable in forty eight monthly installment of $250.00 each, bearing eight percent interest, and providing for ten percent attorneys fees if placed in the hands of attorneys for collection, and conveying lots 1 and 2 in block 7, in the Marlborough Addition to the City of Wichita Falls, Texas, according to the recorded plat of said addition.

This conveyance is expressly made subject to the terms, provisions and restrictions contained and set out in certain agreement and declaration of trust, by J. A. Kemp, J. T. Harrell and G. W Peckham, dated May 24, 1926, and recorded in the deed records of Wichita County, Texas on June 5, 1926.

Dated February 14, 1927, signed by E. E. Scannell and Ethel E. Scannell.

Duly acknowledged by E. E. Scannell and Ethel E. Scannell, his wife, on February 14, 1927, before H. C. Richardson, Notary Public in and for Wichita County, Texas.

919 Filed for record February 25, 1927, at 2:22 P. M. by the County Clerk of Wichita County, Texas.

Recorded in Volume 278, Page 50 of the deed records of Wichita County, Texas.

Mr. Rogers:

The same objection, it is a matter between strangers to the litigation.

The Witness:

From the early part of 1926 to the early part of 1927, I carried title to this property in my name, as far as the building of the house is concerned. I had the balance of the other lots in the Marlborough Addition in my name, that was common practice here in the business world at Wichita Falls during that time.

Various and sundry persons bought these different royalties that were sold to the Wichita Royalty Company, some from George Peckham and some from outsiders, a few of them from Ross Robertson I think maybe Ross Robertson's property was the original property that went into the original trust.

Q. You knew that George Peckham sometimes took those tracts in his name, then the title was transferred into the company?

Mr. Rogers:

We object, it would be immaterial unless and until the money of the royalty company went to the original purchase. No rights of the royalty company would accrue on George Peckham buying a piece of property in his name, and it takes a greater evidence of intent
920 merely to convey a trust than a mere mental reservation and secret condition of mind, in order to bind the grantor. No right could accrue to the royalty company even if such an intent were shown.

The Witness:

Yes, we did. I would not say about the practice as to other companies at that time, and I don't think that practice prevailed in our company, but I could not be sure about it. As to whether or not checks were turned in that had been made payable to George Peckham, I could not say because I did not know where the money was coming from, only as it was reflected on our books, he told me to put it on there, and if I found out afterwards, I put it on there. When I got deeds to property I knew what it was and what it came from, if the deed showed. I knew where most of the property came from prior to George Peckham's death. I did not acquire any additional property after George Peckham's death.

I took the salary that George Peckham did, at first, after he died, which was $400.00 per month, and it finally got down to nothing. At first Ross Robertson, when he was trustee, did not draw anything, and then he got $500.00 per month, which is reflected in the record. This trust was organized by R. R. Robertson. This trust has paid the stockholders one hundred and eighteen percent; in other words, they paid dividends every month or every three months, and the total amounts would be one hundred and eighteen percent, which was paid out of the revenue of the company.

921 I have sent reports to the stockholders, and have most of them. They were sent out sometimes every week and sometimes once a month, and

sometimes maybe it would be a year or two years. I will try and get all the documents that were sent to the stockholders, after I became trustee. Defendant's Exhibit 30, purports to be a letter to the stockholders of the Wichita Royalty Company, dated November 30, 1929. That notice states the truth, I signed it as trustee of the company. I had been with the company since 1923. I knew George Peckham had conveyed to the Wichita Royalty Company several tracts of land. I knew he had conveyed to the company a half interest in the Marlborough Addition, knew about the letter accompanying the deed to the Marlborough Addition. I wrote to the stockholders on November 30, 1929, a letter as follows, "About five o'clock on the afternoon of November the seventh, Mr. George W. Peckham, trustee for this company, had started to his home and family when he was suddenly stricken with a heart attack, and died within a few moments, without regaining consciousness. Mr. Peckham was a comparatively young man, being only forty-six years of age, was apparently in good health and quite active in the oil development of northwest Texas area. He was a man of Sterling character, of keen business judgment. And a conscientious, tireless worker, whose death is indeed an irreparable loss, not only to his family, but to the community and this company." That was my description of George Peckham then. And I further stated, "and still we know that the Great Reaper must come for us all, yet we cannot but wonder sometimes why
922 those of greatest service cannot longer be spared." I wrote that to all of the stockholders. I did not accuse George Peckham of fraud in that letter. Up until I filed this suit in 1931, I never accused him, or wrote a letter to the stockholders, accusing George Peckham of dishonesty. I don't think any stockholder ever requested me to file this suit before it was filed in 1931. That was my duty, as trustee of the Wichita Royalty Company to protect their interest as I saw fit, and that is what I did. When I talked to Mr. Harrell about that in his office, I told him that My records show in the report

on file, I show that he was short with the company, $19,000.00. I gave him credit for all of the offsets that we knew of at that time. I did accuse George Peckham of a shortage of $5,000.00 on the investigation I had made at that time, as far as we could go. I have one piece of property that we have obtained $9,000.00 back on; he paid back in less than fifteen days, one thousand five hundred dollars, and five thousand dollars, that went into our bank account, and I gave him credit for it as heretofore testified to.

I set up a shortage of George Peckham of $19,000.00 and presented that claim to the administrator, which he refused to pay. He promised me at first he would pay it, and later, after they got me worked around where they thought everything was ok, he refused.

This instrument you hand me is a copy of the original claim, presented to the administrator about December 20, 1930, and they kept it and stalled along until May, 1931. I did not file suit at that time, because I didn't know much about it. That is when I begun to inquire into the matter, I hired some lawyers to see what the rights of the stockholders were. I got Guy Rogers. John Davenport was the first one I talked to in regard to it. At the time I filed this claim, or presented this claim to the then administrator, who was Bill Peckham, I had previously talked to J. T. Harrell. I don't think Mr. Harrell ever told me that the books of the bank were open for my inspection. The bookkeeper and myself did check it. We got the liability record from the bank down here, and checked it out and cross checked it, as best we could ascertain what credits had been made, and what payments had been made, and the credits against it. I don't think the bank refused to give me any credit at that time. This statement here says, "Payments of Wichita Royalty Company, unaccounted for against the City National Bank during G. W. Peckham's administration, less payments by G. W. Peckham on behalf of the Wichita Royalty Company. I have since checked those things. The books of the royalty company show some credits. To my knowledge I have never

923

gotten back from the Royalty Company any of the $19,828.67. Only such as we have given credit for here; I would have to trace out each of these items to see, but I don't recall them at this time. In our accounting, we will attempt to trace every single item.

Mr. Humphrey:

We offer this instrument in evidence, Plaintiff's Exhibit No. 48.

924 (Marked "Plaintiff's Exhibit No. 48" and reading as follows:)

PLAINTIFF'S EXHIBIT 48.

Affidavit to Claim.

The State of Texas,
County of Wichita.

I do solemnly swear that the attached claim in favor of Wichita Royalty Company, a trust estate, against G. W. Peckham, deceased, is just and that all legal offsets, payments and credits known to me have been allowed.

The affiant further says that he is the sole trustee of the above company and that he makes this oath on facts which have become cognizant to him by virtue of his being the sole trustee of said company, and that said Wichita Royalty Company is the owner of said claim.

(Signed) E. E. SCANNELL,
Trustee.

Sworn and subscribed to before me by the said E. E. Scannell, in the Capacity stated, this the 16th day of December, A. D. 1930.

(Signed) H. C. RICHARDSON,
Notary Public, Wichita County, Texas.

The above claim was presented to me the .... day of ....., 1930, and after examining it, I hereby ..... this the .... day of ....., 1930.

Administrator of the Estate of G. W. Peckham, deceased.

925 Payments by Wichita Royalty Company Unaccounted for by City National Bank During G. W. Peckham Administration Less Payments by G. W. Peckham on Behalf of Wichita Royalty Company.

To G. W. Peckham by Wichita Royalty Company:

Date		Check No.	Amount
1-19-27		571	$2,000.00
2-19-27		579	2,500.00
3-23-27		591	2,000.00
6-18-27		620	1,200.00
8-16-27		635	1,500.00
10-14-27		650	2,400.00
11-25-27		657	1,800.00
11-25-27	L. F. Wilson Royalty sold to Petroleum Royalties Corporation		5,700.00
2- 1-28	Hattie Vaughn Royalty sold to American Mineral Spirits Company		5,700.00
4-20-28		710	1,850.00
			$26,650.00

By G. W. Peckham for Wichita Royalty Company:

Date	Payee	Principal	Interest	Total
8-31-27	City Nat'l Bank		$500.00	$ 500.00
1$-19-27	City Nat'l Bank	$1,076.00	260.00	1,336.00
11-25-27	City Nat'l Bank	1,014.67	485.33	1,500.00
2-15-28	City Nat'l Bank	4,060.67	424.66	3,485.33
				6,821.33

Balance Unaccounted for:

Paid to G. W. Peckham	$26,650.00
Less Disbursements by G. W. Peckham	6,821.33
Balance Due Wichita Royalty Company	$19,828.67

The Witness:

This automobile that George Peckham purchased was in 1924, and he kept it two years and sold it and the company got the money for it, there was no objection at any time about him having an automobile for the use of the company, by the stockholders, it only comes into account with reference to these checks. We had to have an automobile to get around and look at the property, still I am charging that up against him.

Check No. 529, dated August 20, 1926, has Mr. Peckham's name on the back of it signed by me.

Here is check No. 261. I also have the voucher, on which I wrote the word "August" after the voucher went in. I think the Grimshaw was the first piece of property Peckham bought after he went in as trustee. I think the highest number given the property acquired by Mr. Peckham for the Wichita Royalty Company is 97, but that would not necessarily be the number of pieces of property. The first number bought after Mr. Peckham went in as trustee was No. 71, the Grimshaw. That
927 deed has been offered in evidence, my memorandum record shows that it was signed by G. W. Peckham, and we paid $7,500.00. We issued on that property check No. 1,253 made payable, dated August 10, 1923, issued to the City National Bank, $2,500.00. It says, "Credit to the account of B. L. Fain," and has some initials on it I cannot read. I had no way of tracing that. It is among those items that were listed in tracing down the transactions between George Peckham and the Wichita Royalty Company. I don't recall that this was in the original suit, it came in later, in the original suit we did not go back that far. The records seem to show that this is one of the items in which George Peckham defrauded the company. This suit was filed in June, 1936. One suit was filed in 1934, in September. That suit does not mention the Grimshaw, the first mention of the Grimshaw was in June, 1936. In the original suit, as I recall, we only went back to a little time prior to the notes the bank originally filed suit on, out of which this litigation arises;

I think to along in the fall of 1925, October, or November. I am not quite certain about the time. In 1936, we seek an accounting from the time George Peckham came in as trustee. I knew of the transaction called the Grimshaw, at the time of the filing of the suit in 1931, but I had not gone into it, I did not know how much was on the Grimshaw, and that there was another interest sold, until this spring, or how much the Wichita Royalty Company bought—I mean how much George Peckham got in the original assignment to him, and that went to the
928 Wichita Royalty Company, I had not traced it down. I did know from what source the Wichita Royalty Company got it, and I expect I knew in 1931. As to accusing George Peckham of fraud, the Supreme Court said what was fraud, and that is what I said. At the time I decided to accuse George Peckham of fraud, I knew all about the record, I knew that we had paid something like $7,500.00 for the Grimshaw. But did not include it and did not decide to repudiate it in 1931, we did decide to repudiate it in 1936, we went back to the source, when George Peckham came in.

The three checks with reference to the Grimshaw proposition have been offered in evidence, the first one for $2,500.00, No. 1,253, March 10, 1923, that check was returned to our office about the first of April, 1923, and has been in my possession since. I posted the check in the ledger. On the back of that check it shows it went to the credit of B. L. Fain. I did not ask B. L. Fain about it, I had no way of knowing where the check went to. B. L. Fain still lives in Wichita Falls and has been living here during the last thirteen years. I made inquiry of the City National Bank about the check. I could have, if I had looked at the check, known who got the money, or I could have gone to B. L. Fain. With reference to the second check, $2,516.66, I doubt very much if Mr. Fain would be able to give any information in regard to it, I didn't ask him because the check is made payable to George W. Peckham, and I didn't know whether B. L.

Fain got it or not. On May 6 or 7, 1923, George
929 Peckham gave B. L. Fain a like check. I never made any investigation to see whether or not B. L. Fain had this property under contract. F. O. Harrell is an oil man who did live here in Wichita Falls. He does not live here now, he lives in Oklahoma City. I do not have any connection with F. O. Harrell, he has been a friend of mine since about 1923. He does not hold any property in his name for me, I never had any business transactions with F. O. Harrell until recently. I became the trustee of the Perpetual Royalty Company this spring and he was formerly trustee of that company. Our transactions had to do with the deal, transferring the trusteeship from himself to me. He is not related to J. T. Harrell, I have never transferred any of this property to F. O. Harrell. F. O. Harrell did not get any of the Wichita Royalty Company money on the Grimshaw deal that I know of. I do not know whether F. O. Harrell and B. L. Fain were associated together in that transaction or not. We threshed out this instrument and found that he had an interest in it, looked it up on the books of the company and I found where they bought an interest in it. I refer to the Perpetual Royalty Syndicate. I never asked F. O. Harrell about George Peckham's interest or how he acquired it, I saw Mr. F. O. Harrell seldom. I think he left here in 1928, and I have seen him once in a while since then, about four times this spring. I did not ask him anything about his interest in this transaction at any time. I did not know at that time his company had an interest
in this property, I found it out when I took over
930 this property and begun to look after the company. I think I took over this property some time in March or April, 1936, several months prior to the time I accused George Peckham of fraud. Our memorandum record taken off of the book shows it made a total of $8,591.76, that s to September 30, 1936, and it is still producing a little. I do not have what it was making in April, 1931. In May, 1930, the entire lease ran 512 barrels, and we got $17.59 cents for our part, at that time oil was worth $1.46 1/2.

In two years it made about $450.00. From 6-1-28 to 5-31-30, it run $489.85. I knew what it was making in 1931 and did not file suit to cancel it. I knew what it was making in 1934, and did not file suit for cancellation, in 1936 is the first time I ever sought to set it aside. I have been receiving rents and revenue from the property since 1931, and claiming the property for the Wichita Royalty Company, paying the taxes on it, and getting the revenue, paying the gross production taxes on the royalty.

I believe the next property is the Luke Wilson, No. 75.

No. 72 is the Tonkawa property, all of those deals, I think, were made before George Peckham became trustee. It says it was bought on the 6th of February, 1924. The conveyance was from B. L. Fain. George Peckham was the trustee of the company in 1924, in which year the deed is dated. The first check, April 19, 1923, No. 1,299. I have handed you the copy of a contract between George Peckham personally and B. L. Fain, I found it among my records, I couldn't tell you when it was turned over to me, I found it this fall when I begun to hunt up some various properties, I think it has been in the file since 1923. The contract is dated April 19, 1923, whereby George Peckham individually purchased this property and agreed to pay $20,625.00 for it.

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Mr. Boone:

We offer it in evidence, marked "Defendant's Exhibit 110."

DEFENDANT'S EXHIBIT 110.

State of Texas,
County of Wichita.

This Agreement entered into by and between B. L. Fain hereinafter styled Party of the First Part, and Wichita Royalty Company hereinafter styled Party of the Second Part, Witnesseth:

Party of the First Part agrees to sell and hereby does sell to Party of the Second Part for an agreed consideration of $20,625.00 the following described interest.

1/320 of the Royalty (which is equivalent to 1/2560 of the total production), on the Northwest Quarter of Section 34, Township 25 North, Range 1 West, Kay County, Oklahoma; Also 1/64 of the Royalty (Which is equivalent to 1/512 of the total production), on the West 1/2 of the Northeast Quarter of Section 34, Township 25 North, Range 1 West, Kay County Oklahoma; Also 3/640 of the royalty (Which is equivalent to 3/5120 of the total production). On the East 1/2 of the Northeast Quarter of Section 34, Township 25 North Range 1 West, Kay County, Oklahoma: Also 1/256 of the royalty (Which is equivalent to 1/2048 of the total production), on lots 1 and 2 and the South 1/2 of the North east Quarter of Section 3, Township 24 North, Range 1 West, Noble County, Oklahoma.

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Party of the Second Part agrees to purchase above described interest from Party of the First Part for the sum of $20,625.00 to be paid as follows: $10,000 cash receipt of which is hereby acknowledged. $1250 on the 7th day of May 1923; $2500 on the 7th day of June 1923: $2500 on the 7th day of July 1923: and $4375 on the 7th day of August 1923.

It is further understood and agreed that all the oil runs accruing from above described interest beginning at 7 A. M. April 16, 1923 shall be credited by Party of the First part on the $4375 payment due by Party of the Second Part on August 7, 1923.

Party of the First Part agrees to execute proper conveyances in favor of Party of the Second Part covering above described interest which conveyances shall be placed together with a copy of this contract in escrow in the City National Bank of Wichita Falls, Texas, to be held by said bank pending the fullfillment of this contract.

If Party of the Second Part complies with terms
933 of this contract said bank is authorized to turn over to Party of the Second Part above mentioned conveyances upon the final payment recited above.

Witness our hands this 19th day of April, A. D. 1923.

B. L. FAIN,
Party of the First Part.
WICHITA ROYALTY COMPANY,
G. W. PECKHAM,
Party of the Second Part.

The Witness:

The Tonkawa property produced $39,892.71, and the checks show it cost $20,968.77, some item of interest included in the check. The property was put on the books of the Wichita Royalty Company May 31, 1923, $20,625.00. I am reading from the ledger. The check No. 1,299, dated April 19, 1923, made to B. L. Fain, in the amount of $10,000.00, the voucher reads, "To apply on purchase price of royalty, interest in Tonkowa pool, $10,000.00." That is the first record I made and that check was the first payment. Check No. 1,319 dated May 7, 1923, made to B. L. Fain, in the amount of $1,258.33, and the voucher reads, "to apply on last payment royalty interest 72, Carmichael, Goldtry, McDaniel and Ceverlin tracts, Tonkowa pool." That went on my books and records May 7, 1923.

Check No. 3, dated June 15, 1923, for $2,533.33, to B. L. Fain, Wichita Royalty Company, by E. E. Scannell, to pay last payment royalty interest No. 72, Carmichael, Goldtry, McDaniel & Ceverlin, Tonkowa, Oklahoma. Principal $2,500.00, interest, $33.33. $2,550.00 check No.
934 20, dated July 6, 1923, and the voucher reads, "To apply on last payment royalty interest No. 72, Carmichael, Goldtry, McDaniel and Ceverlin, Tonkowa pool." I got the information on that check from Mr. Peckham. I am sure we had a conveyance to this property. I hand you two instruments, one of them is dated February 6, 1924, conveying three tracts. The other

one dated February 6, 1924. Between the time of the full payment of this purchase price on the sixth of July, 1923, until the 6th of February, 1924, this property stood in the name of B. L. Fain. I took the acknowledgment of Mr. Fain to each of these instruments. The Royalty Company bought this property from B. L. Fain. He got, from Godwin, Barkley Company, on the Goldtry, the deed dated April 7, 1923. And from the Godwin, Barkley Company he got a deed on the Dorothy Carmichael on the 7th of April, 1923, and from the Godwin Barkley Company on the 7th of April, 1923, he got a deed to the Rosalee Ceverlin. There is one more, on the McDaniel, I have not checked the interest on it. But I imagine that declares a larger interest than we have. I don't know whether the Wichita Royalty Company owned it prior to the time we got the conveyance or not, other than this contract which is marked "Defendant's Exhibit 110," dated April 19, 1923. I am sure that has been in our possession ever since April 19, 1923. This seems to be a copy of what purports to be a contract. I have given you all the information I have on property No. 72, I will endeavor to see if I have any other information.

935 Property No. 72, known as the Tonkowa property made more than it cost. It was not purchased from George Peckham, as I understand, and we are not seeking to set it aside. I do not know whether there was any expense attached to the acquisition of property No. 72 or not, other than what the records will show. I doubt if any examination of title was made by the Wichita Royalty Company. As I recall it, that property was bought in quantity. That is a large interest, and then resold, and I am under the impression than when the large amount was bought, the large interest, the title was examined and made to it, and then it came on, when it was divided up, the purchasers or repurchasers took the title opinion that was originally rendered. I don't think I have the title opinion. I have no records of George Peckham from which I could tell whether he personally paid the expense. I have not asked B. L. Fain about it. Mr. Fain

and I used to be partners up until the time this lawsuit got so hot they brought so much pressure on him that we had to separate.

February, 1925, as soon as my salary was reduced, George Peckham began paying me $100.00 out of his pocket, after that ceased B. L. Fain assumed the title of President of the Tolowa Company, and I was still with it and went with B. L. Fain. I drew $200.00 per month. It was a corporation and B. L. Fain was the president. From the fall of 1925 until 1933, I was drawing a salary from a corporation which B. L. Fain was president of, and associated with him a good deal. I expect I had a few business transactions with Mr. Fain, how-
936 ever, we did not trade very much together, outside of our business. I was a good friend of B. L. Fain's, I never asked him about this. I sued in this case, and charged Mr. Peckham with fraud, when I was working for B. L. Fain in 1931. I did not ask Mr. Fain about this transaction, that is, what expense Mr. Peckham was out for the acquisition of this property, and I am sure Mr. Fain would not know.

H. H. CARSON, recalled, for further re-direct examination by Mr. Humphrey testified as follows:

I have testified heretofore in this case; I have been delegated by the bank to undertake to make an analysis and investigation of the various items in controversy in this case. I have had experience in accounting, bank accounting and bookkeeping. I have been in the banking business sixteen years, thirteen of that time with the City National Bank, which bank has been a commercial banking institution officered by numerous officers and employees. I believe when I started to work for the City National Bank there was about forty-two or forty-three officers and employees, and it got down to thirty some odd, and then went back up in the forties. They had tellers, receiving and paying and collections, and also note discount tellers. The same individuals were both paying and receiving tellers, the other tellers were in different departments.

937 It has taken a considerable time to investigate with reference to these various items, I have been devoting most of my time to it for the last six months, and during that time have had access to the books and records of the Wichita Royalty Company, with the exception of one or two books which have been misplaced—I did not see the journal which they could not locate, and I did not see the cash receipts, however, I don't know that I asked for them. I saw their ledgers and their journals and their canceled checks and vouchers. Also a list and description of their properties. I also furnished the Wichita Royalty Company our books and records reflecting the various transactions; I made copies of bank deposit slips statements and checks, and note references, and individual accounts of various parties. I also had access to such records as were available from the estate of George Peckham. I had his bank statement and his canceled checks. Also this book here that has been offered in evidence, the memorandum book. It is in his handwriting. He kept no regular set of books that I could find. It developed during the investigatidon that Mr. Peckham, and also the Royalty Company, had an account involving certain of these transactions with the Security National Bank. which was functioning in Wichita Falls at that time, and has since closed. I have not been able to find out anything from the books and records of the Security National Bank, the man that is in charge of those papers told me that the records had been destroyed
938 by the receiver. The bank went into liquidation.

I have also been to various counties and checked the deed records, in the county clerk's offices. I have interviewed the parties who made some of the deeds that are involved herein. I made the investigation in Archer County, Eastland County, Callahan County, Gray County, Wheeler, Wilbarger and Wichita County. I also investigated the Marlborough Addition account, which is the same as the Texas Investment Company—examined their books. In other words, I made a rather

comprehensive audit of investigation of these matters. From my investigation I have become acquainted with various items involved in this transaction. Most of these checks, or practically all of them, are what is called voucher checks. From my investigation, I determined that those vouchers had been detached at the time the checks were presented at the bank. I knew George Peckham while he was living, I was working in the bank at that time, handling the collection department. I knew the general reputation of George Peckham when he was alive, and that reputation for truth and honesty and integrity was good—and he was so regarded by the people who knew him.

I have checked each item in paragraph 17, of the cross complainant's re-casted cross complaint and interpleader, and have made a careful analysis and investigation of all the facts and records that I had at hand to determine the application of the various funds of Mr. Peckham. The first item, check No. 427
939 is dated October 8, 1925 for the sum of $5,500.00, payable to the plaintiff bank, and alleged that Peckham received individual credit for this sum; that item was honored on or about that date by the plaintiff bank. It is signed by E. E. Scannell for trustee, handled by teller No. 7 in the bank. G. W. Peckham made out that deposit slip. G. W. Peckham individually was given credit for that sum of $5,500.00, on his individual ledger account. I examined the Wichita Royalty Company voucher notation, which shows, property No. 81, to purchase of one-fourth of the royalty on the east thirty acres of a seventy-one acre tract of land out of the Milligan Survey, Callahan County, Texas, $2,500.00. Property No. 82, to purchase of one-eighth of royalty on east half of Section 4, V. V. & CRCo Survey, Certificate 682, 320 acres Archer and Young County, Texas, $1,500.00. Additional interest, description of that to be accepted upon approval of title, $1,500.00. I have found in what manner George Peckham expended the sum of $5,500.00. I have seen the deed from A. J. Mathis

and wife that has been exhibited in evidence to the thirty acre tract in Callahan County. I have the data upon the expenditure for purchase money for that thirty acre royalty. George Peckham paid a draft to the First National Bank of this city for $2,250.00, plus $2.25 exchange on that thirty acres. The deed accompanied the draft. He paid a commission of $225.00 to C. A. Rogers, which check has been offered in evidence. Also title expense to E. C. DeMontel of $25.00, which is included in the $71.00 check heretofore offered
940 in evidence. I have a check for $2,252.25 payable to the First National for the purchase of the draft and the revenue stamps, to the Callahan Royalty.

Mr. Humphrey:
We offer the check in evidence.

PLAINTIFF'S EXHIBIT 49.

Dated Wichita Falls, Texas, 10-17-1925. City National Bank of Wichita Falls, $2,252.25. Pay to the order of First Nat'l Bank (Signed by G. W. Peckham. Indorsed (Stamped) First National Bank Wichita Falls, Texas, Cleared Oct. 19, 1925, Paid Through Clearing House. Perforated Paid 10-19-25.

The Witness:
The check you now hand me is dated 10-20-25, payable to the order of revenue stamps, $2.50 and signed by G. W. Peckham.

Mr. Humphrey:
We offer that check in evidence, Plaintiff's Exhibit 50.

PLAINTIFF'S EXHIBIT 50.

Dated, Wichita Falls, Texas, 10-20-25. The City National Bank Wichita Falls. Pay to the order of Rev.

Stamps, $2.50. (Signed) G. W. Peckham. Perforated Paid 10-23-25.

The Witness:
The check you now hand me is dated 10-24-25, payable to C. A. Rogers, in the amount of $225.00. I have not discussed this check personally with Mr. C. A. Rogers.

Mr. Humphrey:
We offer the check in evidence.

941 PLAINTIFF'S EXHIBIT 51.

Dated, Wichita Falls, Texas 10-24-1925. City National Bank of Wichita Falls. Pay to the order of C. A. Rogers, $225.00. Comm. on Cross Plains. (Signed) G. W. Peckham. Indorsed C. A. Rogers, perforated paid 10-26-25. (Stamped) Paid Through Clearing House Oct. 26, 1925.

The Witness:
C. A. Rogers is a local citizen here. The next check you hand me is for $71.00 to E. C. DeMontel, I have discussed that with Mr. DeMontel, he is a reputable attorney here at the Wichita Falls Bar, and is available as a witness.

Mr. Humphrey:
We offer the check in evidence, Plaintiff's Exhibit 52.

PLAINTIFF'S EXHIBIT 52.

Dated, Wichita Falls, Texas 11-3-25 No— The City National Bank of Wichita Falls. Pay to the order of E. C. DeMontel, $71.00. (Signed) G. W. Peckham. Indorsed E. C. DeMontel Paid 11-3-35 (Perforated).

The Witness:

The total of those checks aggregates $2,504.75. I have a record as to whether Mr. Peckham reimbursed the $4.75 which is Wichita Royalty Company check No. 438, dated November 7, 1925, payable to G. W. Peckham. Revenue stamps on royalty deed to property No. 81, $2.50. Miscellaneous expense, exchange draft on property 81, $2.25. The record shows that the sum of $2,504.75 was expended by Peckham for the purchase of the Callahan Royalty and he was reimbursed the excess of $2,500.00. The title was taken in the Wichita Royalty Company from the land owner.

942

The next is property No. 82, acquired by G. W. Peckham for the Wichita Royalty Company, $1,500.00. The instrument which you now hand me is the deed, to the second tract described in the voucher on the check for $5,500.00.

Mr. Humphrey:

We offer it in evidence, Plaintiff's Exhibit 53.

PLAINTIFF'S EXHIBIT 53.

From B. L. Fain to Wichita Royalty Company.

Consideration $10.00.

Conveying an undivided 1/64th interest in and to all of the oil, gas and other mineral in and under and that may be produced from the following described land situated in Young and Archer County, Texas, to-wit:

All of the E. Ponkonin Survey, Number Seventeen hundred (1700) and all of the L. Pankonin Survey, Number seventeen hundred and one (1701), otherwise known and described as the East one-half of section 4, B. B. B.

& C. R. R. Co. Survey, Certificate No. 692, containing three hundred and twenty acres, more or less.

Documentary stamps $1.50.
Dated October 9, 1925. Signed by B. L. Fain.

Duly acknowledged by B. L. Fain, on October 9, 1935, before LaVerne Hicks, Notary Public, Wichita
943 County, Texas. Filed for record, November 12, 1925, at 4:00 o'clock P. M. and duly recorded December 16, 1925, at 2:00 o'clock P. M. in the deed records of said county in volume 116, page 130, deed records of Young County, Texas.

The Witness:

I determined that G. W. Peckham paid the sum of $1,500.00 for that interest from his account, to which this $5,500.00 was transferred. The check is in evidence. The check which you now hand me is Defendant's Exhibit 108, which is a check dated 11-22-25, payable to the order of B. L. Fain for $1,500.00, signed by G. W. Peckham, sale of Kunkle Royalty. That bears the genuine signature of B. L. Fain and is the check, from my investigation, paid upon the Kunkle Royalty evidenced by this assignment. That is $2,500.00 and $1,500.00 that we have accounted for on that voucher. As to the other item of $1,500.00, I have a check dated November 6, 1925, payable to Wichita Royalty Company for $1,500.00, signed by G. W. Peckham and indorsed For Deposit only, G. W. Peckham, Trustee, Wichita Royalty Company, 509 Security National Bank Building, Wichita Falls, Texas. That sum of money was deposited in the Wichita Royalty Company's account. The cash receipt with reference to that items, "original record of cash receipt No. 148 from G. W. Peckham, November 10, 1925." And the description is a cash item that says $1,500.00, "received in payment of money refunded on producing royalties which was not used as additional royalty interest." Check No. 427 is that

check of $5,000.00, and that completes the first
944 item.

Mr. Humphrey:
We offer the check in evidence, "Plaintiff's Exhibit 54".

PLAINTIFF'S EXHIBIT 54.

Dated, Wichita Falls, Texas, 11-6-1925. Pay to the order of Wichita Royalty Company, $1,500.00. Signed by G. W. Peckham. Indorsed For deposit only, G. W. Peckham, as Trustee Wichita Royalty Company, 509 Security National Bldg., Wichita Falls, Texas. (Perforated) Paid 11-10-25.

Mr. Humphrey:
We also offer in evidence the cash receipt book, and ask that it be photostated, as follows:

DEFENDANT'S EXHIBIT 55.

Original Record of Cash Received No. 148

From G. W. Peckham November 10, 1925
Account:

Description of Cash Items	
Received in Payment of	$1500.00
Money refunded on producing royalties which was not used as additional royalty interest was not secured (See check No. 427).	$1500.00
	$1500.00

The above listed cash items received by me and passed to ..... for deposit.

945 The Witness:

From my investigation of the books of the Wichita Royalty Company, they have carried those two properties, the Cross Plains Royalty thirty acres and the Kunkle Royalty and the B. B. B. & C. R. R. Co. as the estate of the company since they acquired it, receiving and collecting the oil runs produced from the royalty. The testimony shows that they produced $8,500.00, or in that neighborhood, from the second royalty.

The next item is check No. 451, dated 12-28-25, for $1,250.00. I have made an investigation of that item. The allegation that this sum of money was transferred from the royalty account to Peckham's individual account is correct. I have the original deposit slip, taken by teller No. 9, it does not indicate his name. The deposit slip is evidently in the handwriting of one of Mr. Peckham's bookkeepers. The check is signed E. E. Scannell, for trustee.

Mr. Humphrey:

We offer the check in evidence.

PLAINTIFF'S EXHIBIT 56.

Wichita Royalty Company, Wichita Falls, Texas. No. 451, dated Decembe: 28, 1925. "9" (In pencil) No. 83 (48). When properly indorsed pay to the order of City National Bank $1,250.00. To the City National Bank, Wichita Falls, Texas. Signed Wichita Royalty Company by E. E. Scannell for trustee. (Indorsed) Cr. to a/c G. W. Peckham. Indorsement hereon by payee contributes acknowledgement of full payment of the items listed on accompanying remittance statement. No other receipt required. Perforated Paid 12-28-25.

Mr. Humphrey:

We also offer the following check.

946 PLAINTIFF'S EXHIBIT 57.

Wichita Royalty Company, Wichita Falls, Texas. October 8, 1925. No. 427. "7". In red pencil Dp to cr of GWP 10-8-25 When properly indorsed pay to the order of City National Bank, $5,500.00. (In pencil 81 (47) To City National Bank, Wichita Falls, Texas. Signed Wichita Royalty Company by E. E. Scannell for trustee. Indorsement hereon by payee constitutes acknowledgment of the payment of items listed on accompanying remittance statement. No other receipt required. Perforated Paid 10-8-25.

The Witness:

My investigation shows that this check of $1,250.00 was for the purchase of the Porter Ranch. The pencil notation on the Wichita Royalty Company voucher No. 83, M. L. Porter Ranch, does not show what interest. I found out in what manner Mr. Peckham expended this $1,250.00. On December 18, 1925 he gave his check to Knight & Hines for $1,200.00, signed G. W. Peckham, in the corner it says "1/8—1,000 acres Archer County acreage, Porter Ranch." Then on December 21, 1925, he gave his check to Knight & Hines for $50.00, signed G. W. Peckham, and says "Balance cash payment 1,000 acres Archer County, Texas."

Mr. Humphrey:

We offer in evidence the two checks, marked "Plaintiff's Exhibits 58 and 59, as follows:

PLAINTIFF'S EXHIBIT 58.

Wichita Falls, Texas, Dec. 18, 1925 No. ...., City National Bank of Wichita Falls, Texas. Pay
947 to the order of Knight & Hines, $1,200.00. Signed G. W. Peckham. 1/8 1,000 acres Archer County, acreage Porter Ranch. Indorsed Knight & Hines. W. T. Knight by A. H. Herron. Paid 12-21-25.

PLAINTIFF'S EXHIBIT 59.

Wichita Falls, Texas, 12-21-1925 No. .... "5" The City National Bank of Wichita Falls. Pay to the order of Knight & Hines, $50.00. Signed G. W. Peckham. Balance cash payment 1000 acres Archer Co. Texas. Indorsed Knight-Hines (Perforated) Paid 1-2-26.

The Witness:
The instrument you now hand me is a copy of the deed to the M. L. Porter Ranch.

Mr. Humphrey:
We offer the deed in evidence, Plaintiff's Exhibit 60.

PLAINTIFF'S EXHIBIT 60.

Warranty deed No. 6813.

From M. L. Porter and wife, to W. T. Knight, et al.

Consideration $32,100.00, paid and secured to be paid by W. T. Knight, Harry Hines, J. T. Harrell, C. E. Basham, W. L. Robertson and Geo. W. Peckham, ten thousand dollars cash, and note No. 1 for $7,366.66, dated December 1, 1925, payable on or before a year from date.

Note No. 2, for $7,366.67, dated December 1, 1925, payable on or before two years from date.

948 Note No. 3, for $7,366.67, dated December 1, 1925, payable on or before three years from date, all notes bearing eight percent interest.

For the following described land,

Beginning at a stone marked P. J. B. for an inside corner of the Peter J. Bailey survey; Thence South 950

varas to the S. E. Corner; Thence North 89-25 W 951 varas, a stone for the Southwest corner Peter J. Bailey, Survey, Abstract No. 30; Thence West 1941 varas to stone in road, the Southwest corner J. Pointevant Survey No. 1 Abstract No. 348; Thence No. 0-30W 1600 varas to the Northwest corner of the J. Pointevant survey; Thence East in center of road 960 varas to inside corner; Thence North 457 varas to Northwest corner, a fence corner; Thence South 89-43 East along fence 1020 varas to corner; Thence North 25 varas to corner; Thence East 1295 varas to Northeast corner, in west line of Effic Stanford land; Thence South 1134.4 varas to South line of Peter J. Bailey Survey; thence West 345.2 varas to place of beginning, and containing 1070 acres.

The respective undivided interest of the above named grantees, in the land described in this instrument is as follows: $32.50 Rev. Stamps, attached and cancelled.

HARRY HINES,
1/4 Interest.
W. T. KNIGHT,
1/4 Interest.
J. T. HARRELL,
1/8 Interest.
949 C. E. BASHAM,
1/8 Interest.
W. L. ROBERTSON,
1/8 Interest.
GEO. W. PECKHAM,
1/8 Interest.

Dated December 1, 1925.

Duly acknowledged, December 1, 1925, by M. L. Porter, before J. C. Hays, a Notary Public Archer County, Texas.

Duly acknowledged by Mrs. S. J. Porter, wife of M. L. Porter, on December 1, 1925, before J. C. Hays, Notary Public Archer County, Texas.

Filed for record December 28, 1925, in Archer County, Texas.

Mr. Rogers:

We object to its introduction because the royalty company is not a party grantee in it, and there is no showing that any of the original purchase price went into the payment of the property, nor is it otherwise shown that the Wichita Royalty Company is a party thereto, and the matter relates to an extraneous transaction and is not binding upon the trust. Also the reasons heretofore stated.

(Which objections were by the Court overruled, to which the Defendant then and there excepted)

The Witness:

I examined the records and ledger and journal entries, and copies of vouchers of the Wichita Royalty Company as to whether or not the Wichita Royalty Company carried this 1/8 in the Porter Ranch on its books as its assets. I will look and see when they set them up.

Mr. Rogers:

I wish to add to my objection, that there is no memorandum in writing signed by G. W. Peckham, of
950 any kind or character sufficient to charge this property with a trust in favor of the Wichita Royalty Company, or otherwise to make it the property of anyone other than G. W. Peckham who purchased it individually on December 1, and charged the Wichita Royalty Company therewith on December 28.

(Which objection was by the Court overruled, to which the defendant then and there excepted)

The Witness:

This is to set up in journal entry No. 2, December 1, 1935, royalties owned, notes payable $2,762.50, to set

up balance due royalty No. 83, being one eighth of the land and fee royalty in 1,070 acres M. L. Porter land, Archer County, Texas. $1,250.00 cash and the balance of $2,762.00 and equal payments one, two and three years. This 1,070 acres was purchased at thirty dollars per acre by Knight and Hines, and we secured one-eighth interest as above outlined. I don't know whose handwriting that is in. I found under producing royalties owned in their ledger, dated December 31, 1925, No. 83, and it is journal entry No. 18, $2,762.50. I also find, under ledger of date December 28, property No. 83, check No. 451, $1,200.00 Porter Ranch, as well as the voucher. There are some other items later on with reference to deferred payments. Shows how much was owing, $2,762.50; in other words, the deferred consideration accurately sets out the pro rata part of the royalty company of the deferred notes.

951 Mr. Humphrey:

We offer in evidence the Journal entry on the item, and ask that it be photostated.

(Marked "Plaintiff's Exhibit No. 61" as follows:)

PLAINTIFF'S EXHIBIT 61.

1925.		JE 18.
Dec 31 Royalties Owned	2762.50	
Notes payable		2762.50

To set up balance due on royalty #83 being 1/8 of the land and fee royalty in 1070 acres M. L. Porter Land Archer County, Texas. $1250.00 cash and balance $2762.50 in equal payments 1, 2 and 3 years. This 1070 acres was purchased at $30.00 per acre by Knight & Hines and we secured 1/8 interest as above outlined.

952 Mr. Humphrey:

We also offer in evidence the ledger, and ask that it be photostated.

PLAINTIFF'S EXHIBIT 62.

Name: Producing Royalties Owned.

Address: .....

Date 1925	Items	Fol.	Debits	Date 1925	Items	Fol.	Credits
June 1		JE1	846,033.17	Nov. 10	#Contra	148	1,500.00
24	#80 Anderson...	385	6,000.00	May 31	83	JE36	4,012.50
29	#80 Anderson...	387	5,000.00	31	.....	JE43	886,802.24
Oct. 8	#81 Callahan Co.	427	2,500.00				
8	#82 Pankonin...	427	1,500.00				
8	#.. Contra	427	1,500.00				
Dec. 28	#83 Porter	451	1,250.00				
Jan. 4	#84 Stephens ...	452	5,000.00				
Dec. 31	#83 Porter	JE18	2,762.50				
Jan. 11	#84 Wilbarger ..	458	5,000.00				
18	#84	461	15,769.07				
			892,314.74				892,314.74

953 The Witness:

The copy of the letter mailed the stockholders of the Wichita Royalty Company, Defendant's Exhibit 26, states, "Since our July 15 report, we have made the following new purchases, among which is a one-fourth of the royalty in the east thirty acres out of the Milligan Survey, or Mathis Addition to the town of Cross Plains, Callahan County," That is the same deed representing the $2,500.00 purchase on item check 427. One eighth of royalty in 220 acres out of Abstract 1700 and 1701 of the E. Pankonin Survey, Kunkle land, Young County, is the item on check 427. And, one-eighth of the land and royalty in 1070 acres, M. L. Porter land in Archer County, cost $1,250.00 cash and $2,762.50 in equal payments, due one, two and three years from the date of purchase, signed by Wichita Royalty Company. Those are the properties you asked me about.

The Porter Ranch is located south and west of Archer City, in an oil producing territory. I examined the records with reference to the returns on the Porter Ranch. I have a check dated July 26, 1926, payable to Wichita Royalty Company for $111.67, signed G. W. Peckham, and says, "Rental on Porter Ranch." "For deposit only, G. W. Peckham trustee, Wichita Royalty Company, Wichita Falls, Texas."

Mr. Humphrey:

We offer the check in evidence.

PLAINTIFF'S EXHIBIT 63.

Dated Wichita Falls, Texas 7-26-1926 The City National Bank, Wichita Falls. Pay to the order of Wichita Royalty Company, $111.67. This check is in full
954 settlement as shown here. Acceptance by indorsement constitutes receipt in full. Rental on Porter Ranch. Signed G. W. Peckham. (Indorsed) for Deposit only, G. W. Peckham as trustee Wichita

Royalty Company, 509 Security National Bank Bldg., Wichita Falls, Texas. Perforated paid 7-27-26.

The Witness:

That check was deposited to the Wichita Royalty Company's account. Mr. W. T. Knight handled this property for the joint owners, from my investigation. He lives here in Wichita Falls. Harry Hines is a partner of W. T. Knight, he also lives in Wichita Falls. Mr. Hines is chairman of the State Highway Commission of the State of Texas.

I now have original record of cash received No. 171, Wichita Royalty Company, with reference to the item of $111.67 Plaintiff's Exhibit 63, it shows revenue from the M. L. Porter Ranch, Archer County, Texas. Shows, "Our proportion 1/8 of lease rentals and miscellaneous revenues." It reflects receipt of this $111.67. You also now hand me two other checks.

Mr. Humphrey:

We offer the checks in evidence.

PLAINTIFF'S EXHIBIT 64.

Wichita Falls, Texas, 11-26-1928. The City National Bank of Wichita Falls. Pay to the order of W. T. Knight, $21.63. "6" Signed G. W. Peckham. Interest on note on Porter Ranch Indorsed W. T. Knight, Knight & Hines, Perforated Paid 11-26-28.

955 PLAINTIFF'S EXHIBIT 65.

Wichita Falls, Texas 12-5-27. The City National Bank, Wichita Falls. Pay to the order of W. T. Knight, $147.33. This check is in full settlement as shown hereon. Acceptance by indorsement constitutes receipt in full. Interest to 12-1-27 on unpaid bal Porter

Ranch Archer Co. Signed G. W. Peckham. Indorsed W. T. Knight. Perforated Paid 12-8-27. "5".

The Witness:

Those two checks, Plaintiff's Exhibits 64 and 65, represent payments that Mr. Peckham made for interest and taxes on 1/8 interest in the Porter Ranch and the Royalty Company books and records show that they reimbursed him for that exact amount. I find other payments made on the note which will come in later.

Checks Nos. 452, 458 and 461, were transferred to the individual account of G. W. Peckham, on the books and records of the Wichita Royalty Company. I have the deposit slip for those three items; I have three deposit slips, representing two items, $5,000.00 each and the other of $15,769.00. Those are in the handwriting of G. W. Peckham, all three of them. I don't think two of these are in the handwriting of any teller or officer of the City National Bank. Teller No. 7 handled the five thousand dollar item. Teller No. 8 handled the January 4, 1926 item. Teller No. 7 handled the $5,000.00 item. I do not know who teller No. 7 was without looking at the records. Teller No. 8 handled the third item.

956 Mr. Humphrey:

We offer in evidence the three deposit slips, marked "Plaintiff's Exhibit 66, 67 and 68" as follows:

PLAINTIFF'S EXHIBIT 66.

City National Bank, Deposited by G. W. Peckham. Wichita Falls, Texas, 1-4-1926. Checks as follows: "8" B 5,000.00.

PLAINTIFF'S EXHIBIT 67.

City National Bank, Deposited by G. W. Peckham. Wichita Falls, Texas, 1-11-1926. Checks as follows: "7" 5,000.00.

PLAINTIFF'S EXHIBIT 68.

City National Bank, Deposited by G. W. Peckham. Wichita Falls, Texas, 1-18-1926. Checks as follows: Wichita Royalty Co. $15,769.07. "B" "8"

The Witness:

I imagine that about three thousand deposit slips were taken in at that time in one days business at the City National Bank, which included different items. This volume of deposit slips from which I have secured these particular ones, is about one foot thick. I have examined the voucher accompanying those three checks, from the records of the Wichita Royalty Com-
957 pany. The first one shows, check No. 452, dated January 4, 1926, payable to G. W. Peckham for $5,000.00 and says, "Producing royalties on No. 84, to purchase of royalty under the—" that is all there is on it. The notation on the side is "Stephens Royalty, deposited to the credit of G. W. P." The voucher book is kept in the Wichita Royalty Company file. The next voucher, $5,000.00 says, "Producing Royalties," and in ink it says No. 84, and under it in pencil, "Stephens Royalty, deposited credit of G. W. P." I do not know whether the pencil marks were on there at the time the voucher was or not. The $15,000.00 voucher says, "Purchase of one-fourth royalty under Stephens Royalty forty acres operated by Staley, et al, and Barclay and Meadows, in the south Vernon field, total cost $25,769.07, less $10,000.00 paid." That is in carbon, and the original typing says, "See our checks Nos. 452 and 458." I never saw the original voucher. The Stephens Royalty is located in the south Vernon field.

Defendant's Exhibit 8 is the original deed from J. T. Harrell and C. E. Basham to the Wichita Royalty Company, conveying a quarter int st in an overriding royalty in property in Wilbarger ounty, as shown by the description in Defendant's Exhibit A. I examined to see how much Mr. Peckham advanced of his own

money and property in payment of Basham and Harrell for that royalty, which is $22,201.32, he paid his half interest in the Curlee land for $3,567.75, making a total of $25,769.07. That corresponds with the amount
958 that the Wichita Royalty Company transferred to Mr. Peckham's account; Mr. Peckham paid some interests on those deferred payments. I will give a full detail of the Stephens Royalty transaction from my records, that is, the royalty company records, and the bank records, and Mr. Harrell and Mr. Basham's records, and the Curlee records, and Peckham's records, as follows: On January 4, 1926, the Wichita Royalty Company gave their check No. 452, for $5,000.00; on January 11, 1926, they gave their check No. 458 for $5,000.00. On January 18, 1926, they gave their check No. 451, for $15,769.07. There is a total consideration transferred to Mr. Peckham's account of $25,769.07. Mr. Peckham paid to J. T. Harrell and C. E. Basham on January 16, 1926, $2,201.32; on January 25, 1926, he paid them $10,028.00, $10,000.00 principal and $28.00 interest; on March 6, 1926, he paid them $5,060.00, $5,000.00 principal and $60.00 interest; on March 31, 1926, he paid them $5,087.00, $5,000.00 principal and $87.00 interest; the total is $22,376.32. He gave them a deed to his half interest in the Curlee land, consideration $3,567.75. That made a total for the Stephens Royalty, $25,944.07, that he paid J. T. Harrell and C. E. Basham for that property.

The following checks are the ones I have recited, that Peckham made as payment for that property. Those checks were paid by the City National Bank and charged to Mr. Peckham's individual account.

959 Mr. Humphrey:

We offer the checks in evidence, marked "Plaintiff's Exhibits 69, 70, 71 and 72," as follows:

PLAINTIFF'S EXHIBIT 69.

Wichita Falls, Texas 1-25-26 "4" The City National Bank of Wichita Falls. Pay to the order of J. T. Harrell and C. E. Basham, $10,028.00. (Signed) G. W. Peckham. Indorsed J. T. Harrell CEB C. E. Basham. Perforated Paid 1-25-26.

PLAINTIFF'S EXHIBIT 70.

Wichita Falls, Texas, March 6, 1926 No... "18" The City National Bank of Wichita Falls. Pay to the order of J. T. Harrell & C. E. Basham, $5,060.00. Signed G. W. Peckham. Indorsed J. T. Harrell C. E. Basham. Perforated Paid 3-6-26.

PLAINTIFF'S EXHIBIT 71.

Wichita Falls, Texas, January 15, 1926 No. .... "4" The City National Bank of Wichita Falls. Pay to the order of J. T. Harrell & C. E. Basham, $2,201.32. Signed G. W. Peckham Indorsed J. T. Harrell C E Basham Vernon Royalty (Perforated) Paid 1-16-26.

PLAINTIFF'S EXHIBIT 72.

Wichita Falls, Texas, March 31, 1926. No. .... "18" The City National Bank of Wichita Falls (in pencil) OK JR PD 5087.00 Pay to the order of J. T. Harrell and Geo. W. Peckham $5087.00 (Signed) G. W. Peckham (Indorsed) J. T. Harrell C. E. Basham Perforated Paid 4-1-26.

960 The Witness:

Check dated January 25, 1926 was charged against G. W. Peckham's account on the same day; check

dated March 6, 1926, canceled paid the same day; check dated January 15, 1926, canceled paid on January 16, 1926; check dated March 31, 1926, canceled on April 1, 1926.

The deed which you now hand me is the deed which Mr. Peckham gave Mr. Harrell and Mr. Basham a half interest in what is known as the Curlee land, near Wichita Falls, Texas, about forty acres. Mr. Peckham acquired that land from W. S. Curlee. This deed is from W. S. Curlee to Peckham and Harrell.

Mr. Humphrey:

We offer both of these deeds in evidence, marked "Plaintiff's Exhibits 73 and 74"

PLAINTIFF'S EXHIBIT 73.

Deed from W. S. Curlee to J. T. Harrell, et al.

Consideration $7,628.00, as follows: $4,814.00 cash in hand paid, and the assumption of Note No. 1 for $1,000.00 due in one year after August 24, 1925; note No. 2, for $1,000.00 due in two years after August 24, 1925; note No. 3 for $814.00, said note described in deed from Joe Kerr, filed of record Volume 250, page 334, Wichita County Records.

Conveying all that certain block No. 7 in the Sayles Subdivision of the south one-half of northeast one-fourth of J. A. Scott Survey No. 10, Abstract No. 302, being further described as follows, to-wit: Beginning at the Northeast corner of Block No. 8, the same being the Northwest corner of this Block No. 7, J. A. Scott.

961 Survey, No. 10; Thence East 1324.3 feet to the Northeast corner of Block No. 7; Thence South 0° 08′ East 1327.1 feet to the Southeast corner of said Block No. 7; thence South 89° 46′ West 1333.1 feet to the Southwest corner thereof; Thence North 0° 06′ East 1331.2 feet to the place of beginning.

and containing 38.14 acres of land more or less, exclusive of a 20 foot strip reserved for road right of way together with all improvements, situated thereon.

Dated January 8, 1926.

Revenue stamps, $5.00.

Duly acknowledged by W. S. Curlee on January 8, 1926, before Clarice Brown, Notary Public in and for Wichita County, Texas.

Filed for record January 11, 1926 at 8:00 A. M.

Recorded January 14, 1926, at 3:35 P. M. in volume 243, page 577, Deed Records of Wichita County, Texas.

PLAINTIFF'S EXHIBIT 74.

Deed G. W. Peckham to J. T. Harrell, et al

Consideration $10.00 cash and the assumption of Note No. 1 for $1,000.00 due in one year after August 24, 1925; Note No. 2, for $1,000.00 due in two years after August 24, 1925, and Note No. 3, for $814.00, said notes described in deed from Joe Kerr filed for record in Volume 250, page 334, Wichita County, Texas.

Conveying unto J. T. Harrell and C. E. Basham, undivided one-half interest in and to: Tract of parcel of land, known as block No. 7 of Sayles Subdivision of the South half of the Northeast one-fourth of J. A. Scott Survey No. 10, Abstract No. 302, being
962 further described as follows, to-wit:

Beginning at the Northeast corner of Block No. 8, the same being the Northwest corner of this Block No. 7, J. A. Scott Survey No. 10; Thence East 1324.3 feet

to the North east corner of Block No. 7; Thence South 0° 08′ East 1327.1 feet to the Southeast corner of said block No. 7; Thence South 89° 46′ West 1333.1 feet to the Southwest corner thereof; Thence North 0° 06′ East 1331.2 feet to the place of beginning, and containing 38.14 acres of land more or less, exclusive of a 20 foot strip reserved for road right of way, together with all improvements situated thereon.

Dated January 23, 1926.

Duly acknowledged by G. W. Peckham, January 23, 1926, before Ethel Covington, Notary Public in and for Wichita County, Texas.

Filed for record January 26, 1926, at 8:00 A. M.

Recorded January 28, 1926, at 3:23 A. M. in Wichita County, Texas, Volume 254, page 326 of the Deed Records.

Agreement.

It is agreed, that on October 12, 1925, the books of E. C. DeMontel show that he rendered an opinion to G. W. Peckham, on 71 acres of the D. Milligan Survey, Callahan County, Texas, and charged him $25.00 for it and he rendered a bill for it, and other work that was paid on 11-3-25, in the amount of $71.00.

The Witness:

That is the same E. C. DeMontel that I verified the $25.00 charge on the Cross Plains, D. Milligan-
963 Meadows tract.

I do not know the value of the Curlee land, property values were quite active around Wichita Falls at that time.

Defendant's Exhibit 27, which is a letter to the stockholders of the Wichita Royalty Company, and heretofore introduced in evidence is the same property known as

the Stephens property which I have been asked about, the letter is dated March 15, 1927.

I have not examined the books of the Wichita Royalty Company and other evidences to ascertain what amount of oil had been produced from that sixty acres, known as the Stephens lease; I have a record of the runs on that lease, and another interest up there. From the compilation of the oil runs of a like interest, the interest of Dan Bond, a citizen of Vernon, the records show that Dan Bond, J. T. Harrell and C. E. Basham originally owned this royalty. Mr. Bond did not sell out when Mr. Harrell and Mr. Basham sold, I took the interest he had and compiled the oil runs from that interest, which was identical with Mr. Basham and Mr. Harrell, which was sold to them by Mr. Peckham. There is one twenty acres of Mr. Bond's interest, from May, 1925, to December, 1930, Paid $49,890.18, and the other twenty acres, from March, 1925 to February, 1927, Paid $25,549.41. The total of both interests being $75,439.59.

I have a photostatic copy of the ledger of the Wichita Royalty Company showing the sale of the Stephens Royalty April 1 1930. It says, "Cash, Humble,
964 $500.00. April 1, 1930, sale price, Barclay and Meadows, Journal entry No. 14, $2,750.00." A total of $3,250.00. On April 1, it recites cash from the Humble of $125.00, journal entry No. 13.

This is the three checks for the purchase price of the Stephens Royalty, No. 452, 458 and 461. The records of the Wichita Royalty Company show that those funds were accepted and used for the purchase of this Stephens Royalty. The books and records of the Wichita Royalty Company show that they carried this as an asset of the Wichita Royalty Company from the time they acquired it up until the time they sold it in 1930. Said records also show that they currently received the oil runs and proceeds from the oil runs, from this royalty from 1926 up until the time they passed their title to it in 1930. Check No. 478 is another transfer of funds from the account of Wichita Royalty Company to the in-

dividual account of George W. Peckham. It is dated 3-6-26 and in the amount of $17,623.70. I have the original deposit slip. I also have check No. 479 for $6,000.00. I am familiar with both of those checks, they aggregate $23,623.00. This number 478 is signed by E. E. Scannell and drawn on the account of the Wichita Royalty Company in the City National Bank, for $17,623.70; check 479 for $6,000.00, drawn on account of the Wichita Royalty Company in the City National Bank by E. E. Scannell, payable to the order of the Security National Bank. I am familiar with both of those checks.

965 Mr. Humphrey:

We offer in evidence the deposit slip.

PLAINTIFF'S EXHIBIT 75.

City National Bank Deposited by G. W. Peckham Wichita Falls, Texas 3-6-1926 Checks as follows: "8" "D" $17,623.70.

The Witness:

Mr. Bomar took that deposit, I will tell the history of that transaction; on March 6, 1926, G. W. Peckham acquired a quarter interest in this property from W. H. Peckham for a cash consideration of $11,811.85; to this quarter interest he added his quarter interest acquired originally by him from the Highland Irrigation Company under date of September 18, 1925, and January 8, 1926, transferred his entire half interest to the Wichita Royalty Company by deed dated, by acknowledgment April 10, 1926, for a consideration arrived at as follows: "Cost of one-fourth interest, bought 3-12-26, $11,811.85, the value of half interest based on above cost, the sum of—value of one-half interest based on one-half cost, of one-fourth interest, $23,623.70". Of the $23,623.70 paid to G. W. Peckham by the Wichita Royalty Company

for this property, $17,623.70 was deposited to his account at the City National Bank, and the remaining $6,000.00 was deposited to his account at the Security National Bank. I say deposited to his account at the Security National Bank, because I have Mr. Peckham's statement of his account with the Security National Bank,
966 whereby on March 9, 1926 there was a deposit to his account of $6,000.00; that was the date of the check No. 479. This check was cleared on the City National Bank and paid the following date, on March 10, 1926. This check was payable to the Security National Bank. Defendant's Exhibit No. 11, the statement secured from the file of G. W. Peckham, of the Security National Bank, shows this deposit. I have a check dated March 1, 1926, payable to the order of W. H. Peckham, $11,811.85, signed G. W. Peckham with the notation, "Marlborough Addition." The check is indorsed by W. H. Peckham and paid on March 9, 1926. I do not have the deed from W. H. Peckham to G. W. Peckham.

Mr. Rogers:

The record discloses an objection of the Wichita Royalty Company to all testimony relating to transactions which G. W. Peckham had with himself as trustee, in the matter of Marlborough Addition, except the transfer of funds to his account and it having been agreed that such objection might be carried through the trial. Such objections are here renewed under the agreement that they may apply throughout the trial as to all witnesses.

(Which objection was by the Court overruled, to which the defendant then and there excepted)

Mr. Humphrey:

Yes, we agree that these objections which you urge, that the transactions between the Royalty Company and Peckham individually relate to all of the testimony offered, without renewing your objection every time.

Mr. Humphrey:

We offer in evidence the deed from W. H. Peckham dated March 6, 1926, filed March 25, 1926, on
967 page 907 of the record on the other trial.

(Marked "Plaintiff's Exhibit 76" and reading as follows:)

PLAINTIFF'S EXHIBIT 76.

Deed Filed March, 25th, 1926.

Dated March 6th, 1926.

$12.00 R. S. Affixed and canceled.

Recorded April 5th, 1926 in Volume 261, pages, 29, 30 and 31.

Grantor: W. H. Peckham.

Grantee: G. W. Peckham.

Consideration $1.00 and other valuable considerations.

. . . . . .

sold and conveyed and by these presents does grant, sell and convey unto said G. W. Peckham all of his rights, title and interest, being an undivided one fourth (1/4) interest, in and to all those certain lots, tracts and parcels of land situated in Wichita County, Texas, and described as follows, to-wit:

Tract No. 1: Being 51.59 acres of land out of the Cyrus Eakman Survey, and described by meates and bounds as follows, to-wit:

Beginning at a stake for the common corner of block 17, 18, 37 and 38 of Highland Irrigation Subdivision, which stake is 1076.2 feet West and 3237.6 feet south

from the North East corner of Cyrus Eakman Survey;
thence West 1076.2 feet, a stake from the South-
968 west corner of Block 47 of said Irrigation Sub-
division; thence South 115 feet to a stake in center of Avenue "X," thence North 82 degrees and 40 minutes west with center line of Avenue "X," 91.2 feet to a stake in center of Taylor Street; thence North 7 degrees and 20 minutes East with center line of Taylor street 890 feet to a stake; thence North with center line of Taylor Street 641.3 feet to a stake in North line of Avenue "U," thence East 30 feet to a stake for the Southwest corner of Lot eight (8) Block Eleven (11), Southside addition; thence North with the West line of said Lot eight (8), 134 feet to a stake in South line of Lot Four (4), Block Thirty Two A (320A0 Highland Addition; thence South 82 degrees and 40 minutes East 72.4 feet to an iron pipe in center of Taylor Street; thence North 7 degrees and 20 minutes East with center line of Taylor street 30.3 feet to iron pipe under fence; thence East 1194.5 feet a stake; thence South 155 feet for Southwest corner of Lot Seventeen (17, Block Nine (9), Southwide addition; thence East 50 feet to a stake for southeast corner of said Lot Seventeen (17); thence South along West line of Cotton street 654.4 feet to a stake for Southeast corner of Block Twenty (20) of said Southside Addition; thence East 6.8 feet to stake for Northwest corner of Block Nineteen (19) and Northeast corner of Block Thirty Six (36) of said Highland Irrigation Sub-
division; thence South 809.4 feet to the place of
969 beginning, containing Fifty one (51.59) and
59/100 acres of land, and comprising Lots Ten (10) to Sixteen (16) inclusive in Block Nine (9) Lots One (1) to eight (8) inclusive, in Block Ten (10) Lots one (1) to eight (8) inclusive in Block Eleven (11); and all of Block Number Thirteen (13); all of Block Number Fourteen (14); all of Block Number Fifteen (15); all of Block Number Twenty (20); all of Block Twenty One (21); and all of Block Number Twenty Two (22); all being out of the Southside addition to Highland

Addition to the City of Wichita Falls, Texas, and also comprising the following:

All of Block Number Thirty Six (36); all of Block Number Thirty Seven (37); all of Block Number Forty Seven (47); all of Block Number Forty Eight (48); all of Block Number Seventy Seven (77); and all of Block Number Seventy Eight (78) of the Highland Irrigation Subdivision according to the maps or plats duly recorded in the Deed Records of Wichita County, Texas.

Tract No. 2; Being 6.06 acres of land out of the Cyrus Eakman Survey, and described by metes and bounds as follows, to-wit:

Beginning at a stake for the Northwest corner of Lot 2, Block 12, Southside Addition to Highland addition; thence North 7 degrees and 20 minutes east 30 feet to stake in center of Avenue "U"; thence East with the center of said Avenue "U". 145.2 feet to a stake; thence South with center line of Taylor Street, 611.3 970 feet to a stake; thence South 7 degrees 20 minutes West with the center line of Taylor Street 890 feet to a stake in center of Avenue "X", same being the Southwest corner of a tract of 51.59 acres heretofore deeded to parties herein named; thence North 82 degrees and 40 minutes west with center of Avenue "X" 190 feet to a stake; thence North 7 degrees and 20 minutes east with center line of alley 920 feet to a stake; thence South 82 degrees and 40 minutes east 10 feet to a stake; thence North 7 degrees and 20 minutes east with west line of Lot 2, Block 23, of said Southside Addition, 202 feet to a stake in center of Allen Avenue; thence North 82 degrees and 40 minutes west with center of said Allen avenue 50 feet to a stakel thence North 7 degrecs and 20 minutes east with the west line of lots 23 and 2, block 12 of said Southside Addition, 355 feet to the place of beginning. containing 6;06 acres of land and comprising the East one-half of Blocks Nos. 40-a and 41-a of the Highland addition to the City of Wichita Falls. and also Lots 1, 2 and 23 and 24, Block 12, and Lots 1 and 2 of Block 23 of the Southside addition.

This conveyance is expressly made subject to the indebtedness against said tracts and each of them secured by vendor's liens retained and described in two certain deeds from the Highland Irrigation Company to J. A. Kemp, W. H. Peckham, G. W. Peckham, and J. T. Harrell; said deed covering tracts No. 1 above described being dated September 19th, 1925, and recorded in deed records of Wichita County, Texas, in Volume 249, at page 5, and said deed covering tracts No. 2,
971 above described being dated January 8th, 1926 and recorded in the Deed records of Wichita County, Texas in Volume 255 at page 260, as a part of the consideration for this conveyance the said G. W. Peckham assumes and agrees to pay one fourth (1/4) of the indebtedness to the Highland Irrigation Company described in said deeds, and to save the said W. H. Peckham harmless from any liability on said vendor's lien notes.

Duly acknowledged.

Mr. Humphrey:
Also offer in evidence a check payable to W. H. Peckham, dated 3-1-26, signed G. W. Peckham, for $11,811.85.

(Marked "Plaintiff's Exhibit 77" as follows:

PLAINTIFF'S EXHIBIT 77.

(Check) 88-130 11 Wichita Falls, Texas 3-1-1926 No. .... "8" The City National Bank of Wichita Falls (In pencil PK-47 "8" Pay to the order of W. H. Peckham $11,811.85 Eleven thousand and eight hundred eleven and 85/100 Dollars "Marlborough Add." (Signed) G. W. Peckham (Indorsed) W. H. Peckham (Perforated) Paid 3-9-26.

The Witness:

That is W. H. Peckham's indorsement on the back of that check.

I have here check No. 478 for $17,623.70, the voucher notation shows, and in original typing, Real Estate city property to apply on purchase of one-half undivided interest in Marlborough Addition, consisting of 252 lots to the City of Wichita Falls, total consideration $49,566.20. This check No. 478 for $17,623.70 and check No. 479 of this date, for $6,000.00 represents the total cash consideration. For the balance of consideration our interest is subject to $23,215.50, due in one, two and three years from September 19, 1925, and $2,727.00 due in one, two and three years from January 8, 1927. This indebtedness being secured by twelve vendor lien notes against the property which draw eight percent per annum, and payable to the Highland Irrigation Company, see journal entries 27 and 28, March 6, 1926.

Voucher notation on check No. 479, payable to the Security National Bank for $6,000.00, reads, "Real estate city property, to apply on purchase of one-half undivided interest in the Marlborough Addition, consisting of 252 lots to the City of Wichita Falls, Texas. Total consideration, $49,566.20." This check No. 479, and check 478, represents the total cash consideration. our interest is subject to $23,215.50, due in one, two and three years from September 19, 1925, and, $2,727.00 due in one, two and three years from January 8, 1927. This indebtedness being secured by twelve vendor's lien notes against the property, which draw eight percent interest, and are payable to the Highland Irrigation Company. See Journal Entries Nos. 27 and 28, March 6, 1926. Those references to vendor's lien notes correspond with the original deed from Highland Irrigation Company to Kemp, Harrell, W. H. Peckham and G. W. Peckham; the four joint owners originally acquired this property from the Highland Irrigation Company in two sales, and got the deeds.

Mr. Humphrey:

We offer in evidence the two deeds, Highland Irrigation Company to J. A. Kemp, W. H. Peckham, G. W. Peckham and J. T. Harrell, the first dated December 9, 1925, Plaintiff's Exhibit 78.

974 PLAINTIFF'S EXHIBIT 78.

Deed.

Dated Sept. 19, 1925.

Highland Irrigation Co. to J. A. Kemp, et al.

The State of Texas,
County of Wichita.

Know all Men by these Presents:

That the Highland Irrigation Company, a corporation duly incorporated under the laws of the State of Texas, and having its principal office and place of business in Wichita Falls, Wichita County, Texas, for and in consideration of the sum of Sixty One Thousand Nine Hundred Eight ($61,908.00) and no/100 Dollars to it paid and secured to be paid by J. A. Kemp, W. H. Peckham, G. W. Peckham and J. T. Harrell, as follows:

$15,477.00 cash in hand paid, the receipt of which is hereby acknowledged, the balance of said consideration being evidenced by six (6) certain vendor's lien notes bearing even date herewith, in the principal sum of $7,738.50 each, payable to the order of the Highland Irrigation Company, two (2) of said notes being due one year from date, two (2) of said notes being due two years from date and two of said notes being due three years from date, respectively, bearing interest from date at the rate of eight 8% per cent per annum and ten (10%) per annum from maturity and providing for the usual ten per .... attorney's fee clause.

Have granted, sold and conveyed and by these presents do grant, sell and convey unto the said J. A. Kemp, W. H. Peckham, G. W. Peckham and J. T. Harrell, of the County of Wichita and State of Texas, all those certain lots, tracts or parcels of land situated in Wichita County, Texas, being 51.59 acres of land out of the Cyrus Eakman Survey and described by metes and bounds as follows, to-wit:

975 Beginning at a stake for the common corners of Blocks 17, 18, 37 and 38 of Highland Irrigation Subdivision, which stake is 1076.2 feet west and 3237.6 feet South from the North East corner of Cyrus Eakman Survey; Thence West 1072.2 feet a stake for the Southwest corner of Block 47 of said Irrigation Subdivision; Thence South 115 feet to a stake in center of Avenue "X"; Thence North 82 degrees and 40 minutes West with center line of Avenue "X" 391.2 feet to a stake in center of Taylor Street; Thence North 7 degrees and 30 minutes East with center line of Taylor Street 890 feet to a stake; Thence North with center line of Taylor Street 641.3 feet to a stake in North line of Avenue "U"; Thence East 30 feet to a stake for the Southwest corner of Lot Eight (8) Block Eleven (11), Southside Addition; Thence North with the West line of said Lot Eight (8), 134 feet to a stake in South line of Lot (4) Four, Block Thirty Two A (32-A) Highland Addition; Thence South 82 degrees and 40 minutes East 72.4 feet to an iron pipe in center of Taylor Street; Thence North 7 degrees and 20 minutes East with center line of Taylor Street 30.3 feet to an iron pipe under fence; Thence East 1194.5 feet to a stake; Thence South 155 feet a stake for the Southwest corner of Lot Seventeen (17), Block Nine (9) Southside Addition; Thence east fifty feet to a stake for Southeast corner of said Lot Seventeen (17); Thence South along West line of Cotton Street 654.4 feet to a stake for Southeast corner of Block Twenty (20) of said Southside Addition; Thence East 6.8 feet to a stake for Northwest corner of Block Nineteen (19) and Northeast corner of Block Thirty Six (36)

of said Highland Irrigation Subdivision; Thence South 809.4 feet to the place of beginning, containing Fifty One (51.59 and 59/100 acres of land and comprising lots Ten (10) to Sixteen (16) inclusive in Block Nine (9), Lots One (1) to Eight (8) inclusive in Block Ten (10), Lots One (1) to Eight (8) inclusive in Block Eleven (11), All of Block Number Thirteen (13); All of Block Number Fourteen (14); All of Block Number Fifteen (15); all of Block Number Twenty (20); all of Block Number Twenty One (21); and all of Block Number Twenty Two (22). All being out of the Southside Addition to
976 the City of Wichita Falls, Texas, and also comprising the following:

All of Block Number Thirty Six (36); All of Block Number Thirty Seven (37); All of Block Number Forty Seven (47); All of Block Number Forty Eight (48); All of Block Number Seventy Seven (77), and All of Block Number Seventy Eight (78) of the Highland Irrigation Subdivision according to the maps or plats duly recorded in the Deed Records of Wichita County, Texas.

To Have and to Hold (etc. retaining vendor's lien).

Dated 19th day of September, A. D. 1925.

HIGHLAND IRRIGATION COMPANY,
By FRANK KELL,
(Corp. Seal) Vice President.

Attest:
C. M. CROWELL,
Ass't Secretary.

($62.00 Revenue Stamps affixed and canceled.)

Duly Acknowledged.

Filed Sept. 25, 1925, 8 AM.

Recorded Vol. 249, page 5, Deed Records of Wichita County, Texas.

Mr. Humphrey:

We next offer in evidence the deed dated January 8, 1926.

PLAINTIFF'S EXHIBIT 79.

Deed.

Dated Jan. 8, 1926.

Highland Irrigation Co. to J. A. Kemp, et al.

The State of Texas,
County of Wichita.

Know all Men by these Presents:

That the Highland Irrigation Company, a corporation, duly incorporated under the laws of the State of Texas, and having its principal office and place of business in the City of Wichita Falls, Wichita County, Texas, for and in consideration of the sum of Seven Thousand Two Hundred Seventy Two and no/100 ($7,272.00) Dollars, to it paid and secured to be paid by J. A. Kemp, W. H. Peckham, G. W. Peckham and J. T. Harrell as follows:

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$1,818.00 cash in hand paid the receipt of which is hereby acknowledged, and the balance of said consideration being evidenced by six (6) certain Vendor's Lien notes bearing even date herewith, each in the principal sum of $909.00 payable to the order of the Highland Irrigation Company at Wichita Falls, Texas, two (2) of said notes being due on or before one year from date, two (2) of said notes being due on or before two years

from date, and two (2) of said notes being due on or before three years from date, respectively, all of said notes bearing interest from date at the rate of eight (8%) per cent per annum, payable annually, 10% from maturity and providing the usual 10% attorney's fees clause.

Have granted, sold and conveyed and by these presents does grant, sell and convey unto the said J. A. Kemp, W. H. Peckham, G. W. Peckham and J. T. Harrell of the County of Wichita and State of Texas, all those certain lots, tracts or parcels of land lying and being situated in Wichita County, Texas, being 6.06 acres of land out of the Cyrus Eakman Survey, and described by metes and bounds as follows, to-wit:

Beginning at a stake for the NW corner of Lot 2, Block 12, Southside Addition to Highland Addition; Thence North 7 degrees and 20 minutes East 30 feet to stake in center of Avenue U; Thence East with the center of Avenue U 145.2 feet to a stake; Thence S, with center line of Taylor Street 611.3 feet to a stake; Thence 7 degrees 20 minutes West with center line of Taylor Street 890 feet to a stake in center of Avenue X, same being the SW corner of a tract of 51.59 acres heretofore deeded to parties herein named; Thence North 82 degrees and 40 minutes West with center of Avenue X 190 feet to a stake; Thence North 7 degrees 20 minutes East with center line of Alley 920 feet to [redacted] stake; Thence South 82 degrees and 40 minutes East 10 feet to a stake; thence North 7 degrees and 20 minutes east with West line of Lot 2, Block 23, of said Southside Addition 202 feet to a stake in center of Allen Avenue; Thence North 82 degrees and 40 minutes West with center of said Allen Avenue 50 feet to a stake; Thence North 7 degrees and 30 minutes East with the West line of Lots 23 and 2, Block 12 of said Southside Addition, 355 feet to the place of beginning, containing 6.06 acres of land, and comprising the East one half of Blocks Nos. 40-A and 41-A of the Highland Addition to

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the City of Wichita Falls, Texas, and also Lots 1, 2, 23 and 24, Block 12 and Lots 1 and 2 of Block 23 of the said Southside Addition.

To Have and to Hold, etc. (Retaining vendor's lien).

Dated Jan. 8, 1926.

HIGHLAND IRRIGATION COMPANY,
By FRANK KELL,
(Corp. Seal) Vice President.

Attest:
C. M. CROWELL,
Asst. Sec'y.

($7.50 Revenue Stamps affixed and canceled.)

Duly acknowledged.

Recorded in Vol. 255, page 260, Deed Records of Wichita County, Texas.

(Filed Jan. 13, 1926, 8 AM.)

The Witness:

The Wichita Royalty Company preserved their original deeds in a special form envelope, it is a telescope envelope and opens at the top, special for muniments of title and records and such as that. I got the Marlborough Addition Deed, which has been offered in evidence, from the files of the Wichita Royalty Company. At that time I found the letter with reference to the deed, which has been offered in evidence, which was the first time I ever heard of it.

The next item is check No. 485.

Mr. Rogers:

We offer these checks in evidence, Defendant's Exhibits 111 and 112, as follows:

979 DEFENDANT'S EXHIBIT 111.

"8" Wichita Royalty Company No. 478.

Wichita Falls, Texas. (in pencil) 15, circled. March 6, 1926 (In pencil) Dep. to cr. of GWP 3-6-26—in red pencil $17,623.70. When properly indorsed pay to the order of City National Bank. To City National Bank, Wichita Falls, Texas. Wichita Royalty Company by E. E. Scannell for trustee. Indorsement hereon by
980 payee constitutes acknowledgment of full payment of the items listed on accompanying remittance statement. No other receipt required. Perforated Paid 3-6-26.

DEFENDANT'S EXHIBIT 112.

Wichita Royalty Company, No. 479.

(In pencil 16, circled. Wichita Falls, Texas, March 6, 1926. When properly indorsed pay to the order of Security National Bank, $6,000.00.

To City National Bank, Wichita Falls, Texas. Wichita Royalty Company by E. E. Scannell for trustee.

Containing the same indorsement as to payee as the former check.

(Stamped) Security National Bank Clearing House Paid ..... 1926.

(Indorsements guaranteed, Wichita Falls, Texas. Perforated Paid 3-10-26. "3".

The Witness:

Check No. 485, for $7,500.00 shows to have been transferred from the Royalty Company's account to Peckham's individual account. It is signed by E. E. Scannell and credit given to Mr. Peckham for that item on 3-3-26. The teller is No. 7, Richard Thomason.

Mr. Humphrey:

We offer the deposit slip in evidence.

PLAINTIFF'S EXHIBIT 80.

City National Bank, Deposited by G. W. Peckham, Wichita Falls, Texas, 3-31-1926.

Checks as follows:

"7" "RT" $7,500.00

981 The Witness:

The voucher notation with reference to check No. 485, shows, Real Estate improvements to apply on our one-half interest improving Marlborough Addition, Wichita Falls, Texas, improvements consisting of water, lights, gas, sewerage and grading and paving streets. The notation is from the bound volume of the voucher records by Wichita Royalty Company. I have never seen the original voucher. G. W. Peckham, on April 15, 1926, from his account at the Security National Bank paid to Marlborough Addition the sum of $7,500.00. I do not have the check, but I know it was paid because I have a slip in his statements that was dated April 15, 1926, payable to the Marlborough Addition for $7,500.00 and signed by G. W. Peckham. The check was offered in evidence on the former trial and has not been returned. It is marked "K-54." I have Mr. Peckham's statement for the month of April and part of May, that shows he paid $7,500.00 from his individual account with the Security National Bank. On April 16, 1926, there was a check

for the amount of $7,500.00 charged against his deposit account in that bank. I have a memorandum here that check was missing out of this statement and there is a memorandum enclosed, it shows 4-15-26, and says, "Conveyed 4-16-26, Marlborough Addition, $7,500.00, GWP" and across the face of it is the word "Security." That slip was in the statement when I got it, I do not know what handwriting it is. The statement I refer to is Defendant's Exhibit 12. I also made an investigation of the books of the Marlborough Addition and I have here a cash book of that Addition, cash receipts, and on
982 April 15, 1926, it shows "Security National Bank, G. W. Peckham, Investment $7,500.00," and on the ledger it shows, "Investment Account, G. W. Peckham." On the same day, April 15, 1926, $7,500.00. This shows that Mr. Peckham paid $7,500.00 to the Marlborough Addition for improvements on that date. I do not have the deposit slip, I have the ledger account, which shows the deposit of that amount on that date to the account of Marlborough Addition. The record of the Marlborough Addition also shows that on May 10, from the cash receipt books, J. A. Kemp investment $3,750.00, and his ledger account, J. A. Kemp, Investment account on May 10, shows credit of $3,750.00. The cash book shows the source of the amount and the interests. In other words, the cash book of the Marlborough Addition, the cash book receipt shows that Mr. Kemp on May 10, 1926, paid $3,750.00, shows credit on the ledger of that amount; shows Mr. Peckham paid on April 15, $7,500.00 and a credit on the ledger of that amount, on the books of the Marlborough Addition on the same date; and shows Mr. Harrell on May 10, 1926, paid $3,750.00, for the same purpose and in the same manner. The books of the Marlborough Addition shows these three interested parties, the Wichita Royalty Company, through Peckham, paid $7,500.00 and Kemp and Harrell paid $7,500.00 on this investment account, and that corresponds with the books of the royalty company showing an expenditure of that amount.

Mr. Rogers:
We offer these checks in evidence.

983 DEFENDANT'S EXHIBIT 113.

Wichita Royalty Company. No. 452. $5,000.00. "8" (In red pencil) #84. (In red pencil) Dep. to cr. of GWP. 1-4-26, Wichita Falls, Texas, January 4, 1925 (Corrected to 1926). Pay to the order of G. W. Peckham, $5,000.00. To City National Bank, Wichita Falls, Texas. (Signed) Wichita Royalty Company by E. E. Scannell, for trustee. Indorsed G. W. Peckham. Perforated Paid 1-4-26.

DEFENDANT'S EXHIBIT 114.

Wichita Royalty Company, No. 458. (In pencil) #84. Wichita Falls, Texas. (In pencil) 49, circled. January 11, 1926. Pay to the order of City National Bank, $5,000.00. To City National Bank, Wichita Falls, Texas. Wichita Royalty Company, by E. E. Scannell for trustee. Indorsement hereon, etc. (in red pencil) Dep. to cr. of GWP 1-11-26. "7" Paid 1-11-26.

DEFENDANT'S EXHIBIT 115.

Wichita Royalty Company, No. 461 (in pencil) #84. "8" Wichita Falls, Texas, January 18, 1926. (In red pencil) Dep. to cr. of GWP 1-8-26 (in pencil) 50, circled. Pay to the order of City National Bank, $15,769.07. To the City National Bank, Wichita Falls, Texas, Wichita Royalty Company by E. E. Scannell, for trustee. (Perforated) Paid 1-18-26. (Indorsement hereon, etc.)

984 DEFENDANT'S EXHIBIT 116.

Wichita Royalty Company, No. 485 (in pencil) Improve on Marl (red pencil) Dep. to cr. of GWP 3-31-26 "7" 19

in circle. Wichita Falls, Texas, March 31, 1926. Pay to the order of City National Bank, $7,500.00 To City National Bank, Wichita Falls, Texas. Wichita Royalty Company, by E. E. Scannell for trustee. Perforated Paid 3-31-26.

The Witness:

Check No. 495, payable to the City National Bank for $300.00, drawn on the City National Bank, this item was on April 23, 1926. This item was applied to pay the interest on Wichita Royalty Company note No. 72,690, amounting to $15,000.00 and held by the City National Bank. Said interest due and paid amounting to $300.00. The principal of the note, $15,000.00. This item did not pass through Mr. Peckham's account in any manner. It was handled by cage No. 19, which was the note loan and discount department, went to pay the interest on the note the Wichita Royalty Company owed the bank at that time. The ledger so shows. Mr. Peckham did not receive credit for this item. The voucher of the Wichita Royalty Company shows, interest, in payment of interest, on $15,000.00 borrowed on the City National Bank and so applied to that purpose.

I have also made an investigation with reference to checks numbers 503, 507, 510 and 519, totaling $10,000.00, 503 being for $3,000.00; 507 for $1,500.00; 510 for $4,500.00; 519 for $1,000.00. It shows that these amounts were transferred to the personal account of G. W. Peckham and charged against the account of the Wichita Royalty Company. I have the deposit slip showing the credit to G. W. Peckham. The deposit slip of $3,000.00 was handled by Teller No. 7; the next one for $1,500.00, teller No. 8. Teller No. 8 is Mr. Bomar, and Teller No. 7 is Mr. Thomason. The next one for $4,500.00 handled by teller No. 7, Mr. Thomason. Check No. 519 of $1,000.00 handled by teller No. 7, Mr. Thompson.

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Mr. Humphrey:

We offer the four deposit slips in evidence, Plaintiff's Exhibits 81, 82, 83 and 84.

PLAINTIFF'S EXHIBIT 81.

City National Bank, Deposited by G. W. Peckham, 5-20-1926, Wichita Falls, Texas.

Checks as follows:

"7" $3,000.00

PLAINTIFF'S EXHIBIT 82.

City National Bank, Deposited by G. W. Peckham, Wichita Falls, Texas, 6-2-1926.

Checks as follows:

"8" "B" $1,500.00

PLAINTIFF'S EXHIBIT 83.

City National Bank, Deposited by G. W. Peckham, Wichita Falls, Texas, 6-16-1926.

Checks as follows:

"7" $4,500.00

986 PLAINTIFF'S EXHIBIT 84.

City National Bank, Deposited by G. W. Peckham, Wichita Falls, Texas, 7-15-1926.

Checks as follows:

"7" $1,000.00

The Witness:

Mr. Peckham was given credit for these items in the City National Bank.

The bound volume of voucher notations kept by the Wichita Royalty Company shows, 503 to improvement on Marlborough Addition; 507, $1,500.00, Marlborough Addition, to apply on our proportion of improvements; 510 for $4,500.00, to apply on improvements, Marlborough Addition, our proportion; 519 for $1,000.00, to apply on improvements, Marlborough Addition, our proportion.

The books and records of G. W. Peckham, such as I have made investigation of, in the Marlborough Addition, show that this $10,000.00 was so expended by G. W. Peckham for that purpose. I have here two checks that he used, and I have three slips that was in his statement, and I have the books of the Marlborough Addition. The original checks, one of them dated June 19, 1926, payable to the Marlborough Addition for $4,500.00, signed by G. W. Peckham. Paid on the same date. Then I have a check dated July 23, 1926, payable to the Marlborough Addition for $1,000.00, and signed G. W. Peckham, and paid on the same day, that is the $5,500.00. I have here a memorandum dated May 20, 1926, which says, payable to the Marlborough Addition for $2,000.00, G. W. P.

987 and it was dated 5-20-26 and there was a check charged to his account, as shown by the original record of the bank for $2,000.00 on that date, and the credit to the account of the Marlborough Addition on May 20, 1926, as shown by the ledger sheet of the bank for $2,000.00. The Marlborough Addition shows credits of $4,500.00 and $1,000.00 also, which I have testified about. The other memorandum, dated June 7, 1926, it was paid on June 2, 1926, for $1,500.00, payable to the Marlborough Addition and on June 2, 1926, there was a charge to G. W. Peckham's personal account as shown by the original ledger sheet of the City National Bank and a credit on the same day to the account of Marlborough Addition as shown on that very ledger sheet for $1,500.00.

The next one is dated June 7, 1926, for $1,000.00, payable to the Marlborough Addition, paid on 7-7-1926, charged to his account as shown by the original sheet of the City National Bank in the amount of $1,000.00, and credited to the account of Marlborough Addition on 7-7-1926, as shown by the original ledger sheet. The bank account of George Peckham shows a corresponding debit of $10,000.00 in respect to these various items, and the account of the Marlborough Addition shows a corresponding credit of $10,000.00.

Mr. Humphrey:

We offer in evidence these two checks, marked "Plaintiff's Exhibits 85 and 86."

988 PLAINTIFF'S EXHIBIT 85.

Wichita Falls, Texas, 6-19-1926. "7" The City National Bank of Wichita Falls. Pay to the order of Marlborough Addition $4,500.00. Signed G. W. Peckham. No indorsement. Perforated Paid 6-19-1926.

PLAINTIFF'S EXHIBIT 86.

Wichita Falls, Texas, 7-23-1926. "7" The City National Bank of Wichita Falls. Pay to the order of Marlborough Addition $1,000.00. (Signed) G. W. Peckham. This check is in full settlement, etc. (No indorsement.) Perforated Paid 6-19-26.

The Witness:

The records of the Marlborough Addition show, with reference to the payment of this $10,00.00 as follows:

G. W. Peckham's investment account on the ledger of the Marlborough Addition shows a credit on May 20, 1926, for $2,000.00; on June 2, 1926, the same account shows a

credit of $1,500.00; on June 7, 1926, the same account shows a credit of $1,000.00; on June 19, 1926, that account shows a credit of $4,500.00, and on July 23, 1926, it shows a credit of $1,000.00. The aggregate of the credits being $10,000.00. On May 20, 1926, the cash receipt book shows, the Marlborough Addition shows $2,000.00 from G. W. Peckham. The same book shows on June 2, 1926, they received $1,500.00 from G. W. Peckham and shows on June 7, 1926, received $1,000.00 from G. W. Peckham, and on June 19, it shows they received from G. W. Peckham, $4,500.00; and on July 23, 1926,
989* it shows they received from G. W. Peckham, $1,000.00, aggregating in all $10,000.00. It shows the Marlborough Addition received those amounts for the investment account of G. W. Peckham.

The record shows that G. W. Peckham conveyed a half interest in the Marlborough Addition to the Wichita Royalty Company and had deeded this interest to the Wichita Royalty Company by deed which was delivered; and the other half interest was owned jointly by J. A. Kemp and J. T. Harrell. The ledger account of J. T. Harrell, Investment account on the books of the Marlborough Addition showed that he was given credit for $2,000.00 on May 19, 1926; he also received a credit on June 3, 1926, for $3,000.00. The cash receipt books of the Marlborough Addition show that on May 19, 1926, they received $2,000.00 from J. T. Harrell, for the investment account. On June 23, 1926, they received from J. T. Harrell for his investment account, $3,000.00 making a total of $5,000.00 which would be one-half of the amount that the Royalty Company paid. On the books of the Marlborough Addition under the head of "J. A. Kemp investment account," on May 19, 1926, he was given credit for $2,000.00. On May 22, 1926, his investment account was given credit for $3,000.00 and the cash receipt book of the same company, Marlborough Addition, show that on May 19 they received $2,000.00 for the J. A. Kemp investment account and on May 22, 1926, they received $3,000.00 from J. A. Kemp on his investment account,

making a total of $5,000.00. In other words, there
990 was expended for the improvement of Marlborough Addition at this time the total sum of $20,000.00, one-half of which is paid by Harrell and Kemp who owned a half interest in it and the other half of which was paid by the Wichita Royalty Company thru the account of G. W. Peckham, which owned a one-half interest. The records of the Marlborough Addition, Harrell and Kemp, and Peckham's books and the royalty company's books, reflect those transactions.

I have examined the books and records of the Marlborough and support these items by Mr. Harrell's checks. Mr. Kemp is dead, he died in the fall of 1930. Mr. Duncan kept the books of the Marlborough Addition, he is also dead. The entries I am reading from are those of Mr. Duncan. He was a competent accountant and bookkeeper. The books that I have examined are the corporate books of the Marlborough Addition, which were incorporated under the name of Texas Investment Company and taken from the custody of the officers of that company, one of them is Mr. Deaton.

Check No. 506, $500.00, payable to City National Bank, signed by Wichita Royalty Company by E. E. Scannell, dated May 9, 1926, and paid June 2, 1926, the books of the City National Bank show on June 2, 1926, this check was applied to pay the interest on Wichita Royalty Company note No. 74,590, amounting to $25,000.00 and held by the City National Bank, and says, "Interest due unpaid amounting to $500.00." This item in no manner passed
through Mr. Peckham's account. The copy of the
991 voucher of the Wichita Royalty Company shows, "To payment of interest on loan from City National Bank, $25,000.00 for ninety days." This check was handled by cage 19, which was the loan and discount department. The $10,000.00 which I previously testified to, was charged according to my record, for the purpose stated in the voucher of the Wichita Royalty Company. The next check, No. 521, dated July 16, 1926, payable to the City National Bank for $300.00, signed by the Wichita

Royalty Company. The copy of the voucher of the Wichita Royalty Company shows, to interest on money borrowed from City National Bank, Wichita Falls, for ninety days, $300.00. The records of the bank show, on July 17, 1926, this check was applied to pay interest on Wichita Royalty Company note No. 76-878, amounting to $15,000.00 and held by the City National Bank. $15,000.00 principal and $300.00 interest, and this item in no manner passed through Mr. Peckham's account. The check was handled by cage No. 19, which was the loan and discount department and the records of the Wichita Royalty Company so indicate.

The next check, No. 525, for $4,000.00, together with check 532, for $4,350.78, and 556 for $700.00, and 556-a for $538.19, aggregate $9,595.74. I will explain those checks. Check No. 525, notes payable to apply notes due 9-19-26 and Highland Irrigation Company for land in fee, $4,000.00. No. 532 shows notes payable to apply on note due 9-19-26, to Highland Irrigation Company for land in fee, $3,738.50, interest expense on above note, eight
992 percent for one year, $619.08, total $4,357.58. Check No. 556, shows interest expense to apply on two notes of $7,738.50, at the rate of eight percent per annum, with interest applying on period 9-19-25 to 9-19-26, Highland Irrigation Company note, $700.00. 556a interest expense to apply on two notes for $7,738.56 at the rate of eight percent per annum. This interest applying on period 9-19-25, to 9-19-26, Highland Irrigation Company notes. For the balance interest paid see check No. 556. Three of these checks were signed by E. E. Scannell and one of them signed by G. W. Peckham, which is No. 532 for $4,357.58. Those were E. E. Scannell for trustee under the name of Wichita Royalty Company. I find where all of them but one was deposited to Mr. Peckham's account, No. 556, $700.00, dated December 22, 1926, and paid on the same date, I do not find the deposit slip for that check. Here are the three deposit slips I do find, they are the deposit slips for $4,000.00, $4,357.58 and $538.16. Teller No. 7 received the $4,000.00 check and the $4,-

357.58 check and teller No. 8 handled item for $538.16. Those tellers were Mr. Thomason and Mr. Bomar.

Mr. Humphrey:

We offer the three deposit slips in evidence, Plaintiff's Exhibits 87, 88 and 89.

PLAINTIFF'S EXHIBIT 87.

City National Bank Deposited by G. W. Peckham Wichita Falls, Texas, 8-2-1926.

993	Checks as follows:	
	"7"	$4,000.00

PLAINTIFF'S EXHIBIT 88.

City National Bank Deposited by G. W. Peckham Wichita Falls, Texas, 8-27-1926.

Checks as follows:

"7"	R	-4,357.58

PLAINTIFF'S EXHIBIT 89.

City National Bank Deposited by G. W. Peckham Wichita Falls, Texas, 1-3-1927.

Checks as follows:

		400.00
	6024	60.00
"8"		538.16*
Total		$998.16

The Witness:

I do not find where the $700.00 check went to the credit of Mr. Peckham, I am of the opinion that that was cashed. The records of the Wichita Royalty Company, the copies in the bound volume of the vouchers shows that those checks were to pay the notes of the Highland Irrigation Company. These funds were received from the Wichita Royalty Company by G. W. Peckham to meet their maturing liabilities on notes held by the Highland Irrigation Company and were applied on said notes as follows: Payment to the Highland Irrigation Company for the account of G. W. Peckham on October 15, 1926, the sum of $9,595.74. Aggregating the amount of these four checks. I have the original deposit slip of the Highland Irrigation Company dated October 15, 1926, stating G. W. Peckham, for that amount, together with J. A. Kemp and J. T. Harrell, payment for a like amount. Mr. Harrell and Mr. Kemp each paid half as much as Peckham paid. This is the original deposit slip to the Highland Irrigation Company showing the disposition of those four checks.

994

Mr. Humphrey:

We offer the deposit slip in evidence, PLAINTIFF'S EXHIBIT 90.

Deposited with the City National Bank for the credit of Highland Irrigation Company, Wichita Falls, Texas 10-15-1926, Checks:

J. A. Kemp	4,797.87
J. T. Harrell	4,797.87
G. W. Peckham	9,595.74
"9" Total	$19,191.48

The Witness:

There was entered on October 14, 1926, Marlborough Company's books, $7,738.50. Journal entry No. 13 says "Note", and that is from the G. W. Peckham interest account, and the J. A. Kemp investment account on the same date, shows journal entry No. 13, Note $3,869.25; and the J. T. Harrell investment on the same day, with the Marlborough Addition, shows credit on note $3,869.25. Journal entry No. 13, shows J. T. Harrell investment account $3,869.25, J. A. Kemp investment account, $3,869.25, G. W. Peckham account $7,738.50. Says, To recording payment 10-4-26, the notes 1 and 2, Highland Irrigation Company for individual payment by J. T. Harrell and J. A. Kemp and G. W. Peckham. These payments I detailed included the interest as well as the principal, and those were payments made to the Highland Irrigation Company and not to the Marlborough, of course, the records of the Marlborough would show the amount of the principal of the notes paid and not the interest due.

995

I will state to the Court that the records of the Marlborough the records of the Highland Irrigation Company and the deposit slip which has been offered in evidence, and the records of the Wichita Royalty Company and of the bank, show that this total sum of $9,595.75, was applied to the purpose stated in the copies of the voucher, and Mr. Harrell and Mr. Kemp the other joint owners, paid their exact pro rata part.

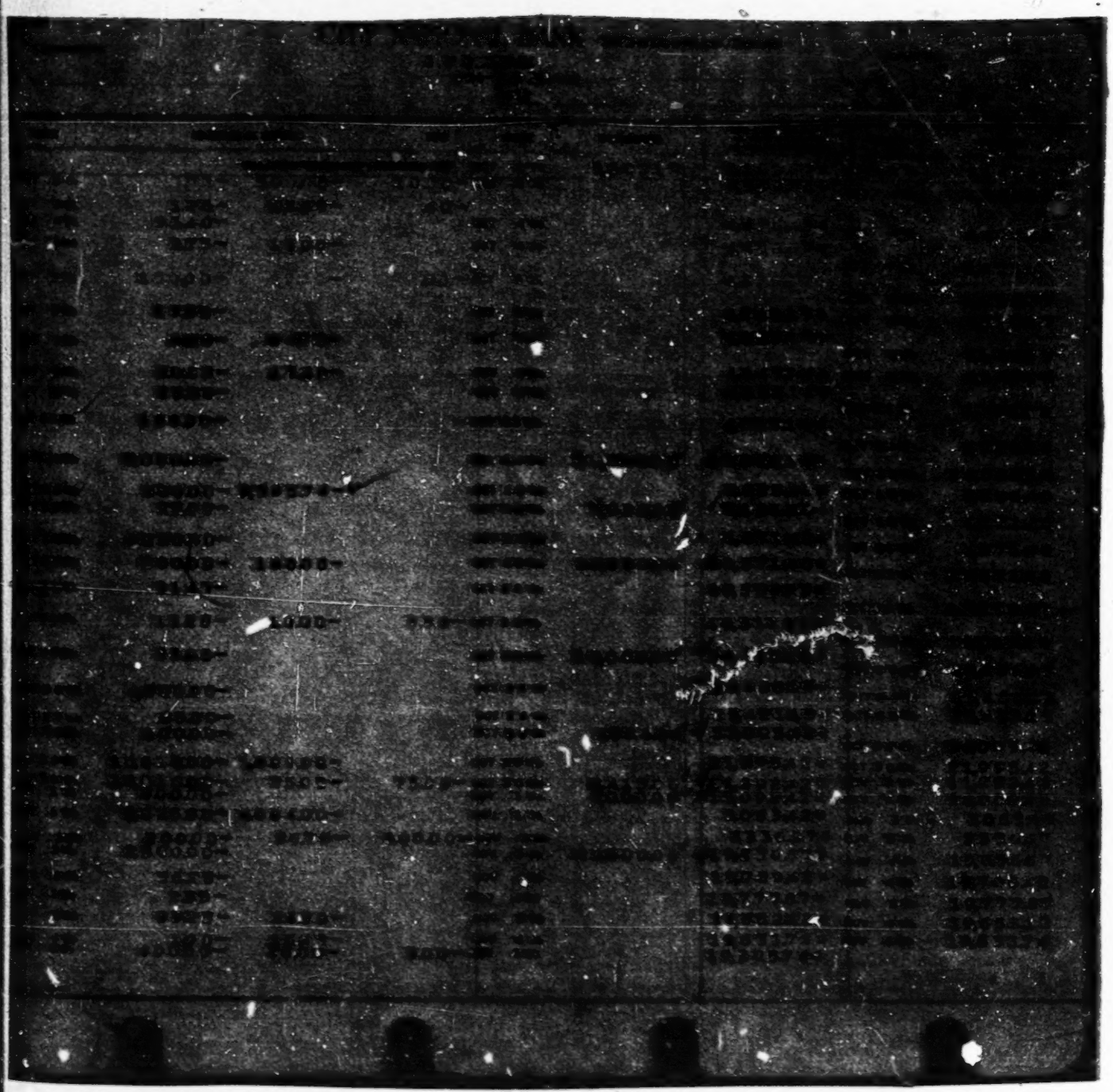
In addition to their records that I have testified about, showing the payments on said sum, of $9,595.75, the records of George Peckham in the bank, in his individual deposit slips, show that these checks in the exact amount that I detailed here were paid by the bank on the days that they were paid. I have a copy of his individual ledger sheet, which is part of the check up I made. I do not have that individual check, I have a memorandum of it I hand you here a slip dated 10-15-26 for $9,595.74, which was found in Mr. Peckham's statements.

Mr. Humphrey:

I offer in evidence in connection with this item and ask that it be photostated, the ledger sheet of G. W. Peckham, showing that on October 15, 1926, a check in the sum of $9,595.74 was charged against his deposit account.

CITY NATIONAL BANK WICHITA FALLS, TEXAS

DATE	CHECKS IN DETAIL			DATE	DEPOSITS		DATE	PROOF
	BALANCE SHOWN BY PREVIOUS STATEMENT			AUG	4,017.84	4,017.84	AUG	4,017.84
AUG	260.00			AUG		3,757.84	AUG	3,757.84
AUG	45.00	12.60		AUG		3,700.24	AUG	3,700.24
AUG	6.12	9.74	1.05					
AUG	5.00			AUG		3,678.33	AUG	3,678.33
AUG	6.00	4.00		AUG		3,668.33	AUG	3,668.33
AUG	39.40			AUG		3,628.93	AUG	3,628.93
AUG	550.00			AUG		3,078.93	AUG	3,078.93
AUG	750.00			AUG		2,328.93	AUG	2,328.93
AUG	250.00			AUG		2,078.93	AUG	2,078.93
AUG	300.00			AUG		1,778.93	AUG	1,778.93
AUG	5.00			AUG		1,773.93		
AUG	50.00			AUG		1,723.93	AUG	1,723.93
AUG	1.50					1,722.43	AUG	1,722.43
AUG	25.00			AUG		1,697.43	AUG	1,697.43
AUG	300.00			AUG		1,397.43	AUG	1,397.43
AUG	200.00	50.00		AUG		1,147.43	AUG	1,147.43
AUG				AUG	4,357.58	5,505.01	AUG	5,505.01
AUG	1,000.00			AUG		4,505.01	AUG	4,505.01
AUG	75.00	14.50		AUG		4,415.51	AUG	4,415.51
AUG	61.65	8,100.00		AUG		4,353.86	AUG	4,353.86
AUG	260.00	33.58	33.58	AUG		4,026.71	AUG	4,026.71
AUG	8,100.00			AUG	4,250.00	176.71	AUG	176.71
SEP	190.00			SEP		176.71	SEP	176.71
SEP	190.00			SEP		176.71	SEP	176.71
SEP	8.04			SEP		168.67	SEP	168.67
SEP				SEP	500.00	668.67	SEP	668.67
SEP	190.00			SEP		478.67	SEP	478.67
SEP	65.00					413.67		
SEP	25.00	200.00		SEP		188.67	SEP	413.67
				SEP			SEP	188.67
				SEP	1,253.00			
				SEP	4,666.47	6,108.14	SEP	6,108.14
							SEP	6,067.98
						3,491.34		
							OCT	3,491.34
							OCT	3,491.34
	100.00	35.25	25.00	OCT		3,331.09		



998 The Witness:

I have here a check for $4,797.87, drawn on the City National Bank, dated October 4, 1926, payable to Highland Irrigation Company. This is one-fourth of the total payment that I have testified about. Half of it is Peckham's and this is Mr Harrell's check.

Mr. Humphrey:

We offer the check in evidence.

PLAINTIFF'S EXHIBIT 92.

Wichita Falls, Texas, Oct. 4, 1926, No. .... (Stamped) Oct. 18, 1926, "9" "2" Pay to the order of Highland Irrigation Company $4,797.87 Signed J. T. Harrell. (Stamped on back Pay to the order of City National Bank Wichita Falls, Texas. Highland Irrigation Company. Perforated Paid 10-19-26 In pencil 230843.

The Witness:

I did not ask for Mr. Kemp's check, however, I verified the fact that he paid a like amount as Mr. Harrell, from his books and records.

Check No. 531, dated 8-27-26 is signed by G. W. Peckham, and payable to the bank, the voucher record shows, interest expense, interest eight percent on $25,000.00 held by the City National Bank for three months, $500.00. That voucher bears the same date as the check and the voucher records. Of course, I never saw the original voucher which accompanied the check. The check was paid for the purpose stated in the voucher. On August 30, 1926, this check was applied to payment of in-
999 terest on Wichita Royalty Company note No. 78-450, amounting to $25,000.00 held by the City National Bank. This check in no manner passed through Mr. Peckham's account, it was applied directly on their liability. I am testifying from the liability ledger of the Wichita Royalty Company with the City National Bank

and this liability ledger shows that this check of $500.00 was applied against the liability of the Wichita Royalty Company on its note of $25,000.00. This check was handled by cage 19, which was the loan and discount department, his office or place of business was on the opposite side from the receiving teller of the bank.

The next check, 540, dated 10-13-26, in the sum of $300.00, payable to the City National Bank and signed E. E. Scannell for trustee of the Wichita Royalty Company, the voucher record of the Wichita Royalty Company says, interest on note City National Bank, $300.00. I am testifying from the copy of the voucher records of Wichita Royalty Company, produced by Wichita Royalty Company. The bank records shows, on October 19, 1926, this item was applied to pay the interest on Wichita Royalty Company note No. 80-371, amounting to $15,000.00, and held by the City National Bank, interest due and paid amounting to $300.00. This item in no manner passed through Mr. Peckham's account. I am testifying, as heretofore, from the records of the Wichita Royalty Company and the City National Bank. This check, as well as check
No. 531, were used for the purposes stated in the
1000 voucher record of the Wichita Royalty Company. They were handled by teller No. 19, loan and discount department.

Check No. 550, is for $7,500.00. Check No. 554, is for $1,500.00. The voucher record on check No. 550, says, Royalties owned, Property No. 95, being 3/16th interest in leasehold estate, to eighty acres, east half of lot 10, of North Anderson Ranch lands, Survey No. ...., Archer County, Texas, $5,000.00; Royalties owned, property No. 96, to apply on purchase of one-fourth of royalty on the southwest sixty acres of the E. Polk land, abstract 717, of William Polk preemption Survey, Archer County, Texas; also one-fourth of the seven-eighths leasehold estate of the west forty acres of the same land, $2,500.00, total $7,500.00. The voucher on check No. 554 says, "Notes payable land in fee, to apply on balance due on M. L. Porter one thousand, seventy acres, purchase, $920.82,

interest expense on the above note, $226.00. Royalties owned, property No. 93, being one-half of the royalty on the south half of the northeast quarter of section 35, township 19, north range twenty-one West, Ellis County, Oklahoma. Also seven-eighths oil and gas lease on the same land, one hundred and sixty dollars. Royalties owned, property No. 96, to apply on purchase of one-fourth of royalty on the southwest eighty acres of E. Polk Land, Abstract 717 of William Polk preemption Survey, Archer County, Texas. Also one-fourth of seven-eighths leasehold estate on the west forty acres of the same land, $198.18, total $1,500.00." Voucher
1001 No. 583, royalties owned, No. 96, charge payment on purchase of one-fourth of royalty on the southwest sixty acres of the E. Polk land, abstract 717, of the William Polk preemption survey Archer County, Texas. Also one-fourth of the seven-eighths leasehold estate of the west forty acres of the same land. This payment, together with payments on checks Nos. 550 and 554, making a total cost of $3,000.00 for the above interest, $301.82.

I have considered the foregoing three items together, because they tie together on vouchers of the Wichita Royalty Company. Those three checks were deposited in the bank and credited to G. W. Peckham. I have the deposit slips on those items. The initials are not on them, but Mr. Bomar was in Cage 8.

Mr. Humphrey:
We offer in evidence the deposit slip.

PLAINTIFF'S EXHIBIT 93.

City National Bank Deposited by G. W. Peckham, Wichita Falls, Texas, 11-20-1926, Checks as follows: Wichita Royalty Co. 7,500.00 "8".

The Witness:
The next deposit slip is dated 12-2-26 for $1,900.00, one item is for $1,500.00. That is Cage No. 10, I do not know the name.

Mr. Humphrey:
We offer the deposit slip in evidence, Plaintiff's Exhibit 94.

1002 PLAINTIFF'S EXHIBIT 94.

City National Bank Deposited by G. W. Peckham, Wichita Falls, Texas, 12-2-1926.

Checks as follows:

		400.00
		1500.00
"10"	Total	1900.00

The Witness:
You next show me deposit for an item of $301.82, together with other deposits. George Peckham made out that deposit slip himself, in his own handwriting. It was handled by Teller No. 7, Mr. Thomason.

Mr. Humphrey:
We offer the deposit slip in evidence.

PLAINTIFF'S EXHIBIT 95.

City National Bank, Deposited by G. W. Peckham, Wichita Falls, Texas, 3-16-1927.

Checks as follows:

	301.82
	375.00
"7"	7.00
Total	$883.82

The Witness:

These checks were credited to the individual account of G. W. Peckham and charged against the individual account of Wichita Royalty Company. I have corresponding payments made by G. W. Peckham against the transfer of funds, as follows:

1003 On December 2, 1926, G. W. Peckham paid to W. T. Knight the principal and interest due on December 1, 1926, on the note held against the Wichita Royalty Company or G. W. Peckham property No. 83. Principal $920.83, interest $220.98, or a total of $1141.82. That check is signed by G. W. Peckham and says "$920.84 principal, $220.98 interest, Porter Ranch." Check indorsed by W. T. Knight.

The statement you hand me in connection with the Porter Ranch shows ratable payment against each of the owners, the statement is signed by W. T. Knight, December 8, 1926. It is a receipt of the payment of the joint owners, including G. W. Peckham for the Royalty Company, $1,141.82.

Mr. Humphrey:

We offer Mr. Peckham's check in evidence.

PLAINTIFF'S EXHIBIT 96.

Wichita Falls, Texas, 12-2-1926 No. .... City National Bank of Wichita Falls PK-25 (in green pencil) "6" Pay to the order of W. T. Knight, $1141.82. This check is in full settlement as shown hereon. Acceptance by indorsement constitutes receipt in full. (Signed) G. W. Peckham Indorsed W. T. Knight. Perforated Paid 12-2-26.

PLAINTIFF'S EXHIBIT 97.

Statement of Payment of Note No. 1, Favor M. L. Porter & Wife, Dated Dec. 1st, 1925, due Dec. 1st, 1926

with interest from date. Also annual interest on notes Nos. 2 and 3, due 2 and 3 years from date at 8% per annum.

Note No. 1, Due Dec. 1, 1926, held by Bernard Martin, Wichita Falls, ..	$7,366.67	
Interest Dec. 1, 1925 to Dec. 1, 1926- 8%	589.33	$7,956.00
Annual Interest on Note No. 2, due Dec. 1, 1927, held by Ben G. O'-Neal, Wichita Falls		589.33
Annual Interest on Note No. 3 due Dec. 1928, held by Powers Banking Company, Archer City, Texas		589.33
		$9,134.66

Distribution:

W. T. Knight—2/8	$2,283.70	
Harry Hines—2/8	2,283.68	
J. T. Harrell—1/8	1,141.82	
C. E. Basham—1/8	1,141.82	
Wiley Robertson—1/8	1,141.82	
Geo. Peckham—1/8	1,141.82	$9,134.66

Note:

Note No. 1, including interest from date, was paid to Bernard Martin by W. T. Knight, Dec. 2, 1926, at which time the note was marked "Paid" and surrendered and release executed, which was promptly mailed the County Clerk of Archer County for record.

Annual interest on Note No. 2, in the sum of $589.33 was paid Dec. 2, 1926, by W. T. Knight to Ben. G. O'Neal, who issued Receipt and copy of same attached hereto.

Annual interest on Note No. 3, in the sum of $589.33 was paid Dec. 2, 1926 by W. T. Knight to Powers State Bank,

Archer City, for which Receipt was issued and copy of same is attached hereto.

1005 Having been reimbursed in full for their proportion of the above Note No. 1 in the sum of $7,366.67 and interest on same in the sum of $589.33 making a total of $7,966.00; also, the annual interest on Notes Nos. 2 and 3 in the sum of $589.33 each, I hereby acknowledge receipt of payments as follows:

Harry Hines	$2,283.68	
J. T. Harrell	1,141.82	
C. E. Basham	1,141.82	
Wiley Robertson	1,141.82	
Geo. Peckham	1,141.92	$6,850.96

Signed: Dec. 8, 1926 (Signature) W. T. KNIGHT.

Copy.

December 2nd, 1926.

Received this 2nd day of December, 1926, of W. T. Knight check for $589.33 in payment of the annual interest due December 1st, 1926, on note No. 2 of series of three notes made by W. T. Knight, Harry Hines, J. T. Harrell, W. L. Robertson, C. E. Basham and George W. Peckham, payable to M. L. Porter and wife S. J. Porter, which note was given as part payment for 1070 acres of land out of the J. Poitevent survey, Abstract 348, situated in Archer County, Texas.

(Signed) BEN G. O'NEAL.

1006 Copy.

December 6, 1926.

Mr. W. T. Knight, Wichita Falls, Texas.
Dear Sir:

This will acknowledge receipt of your letter of Dec. 3rd. inclosing check for $589.33 being one years interest on

$7366.67 favor M. L. Porter and wife, which amount we have credited to the account of T. B. Wilson as it is our understanding these notes are the property of Mr. Wilson.

Yours very truly,
JNO P. FLEMING,
Cashier.

The Witness:
I have a check dated November 1, 1926, payable to the order of A. A. Peard, in the amount of $160.00, signed G. W. Peckham. Indorsed A. A. Peard, and also Citizens State Bank, Vici, Oklahoma. First National Bank, Woodward, Oklahoma. First National Bank, Fort Worth, Texas. It shows to have been cleared and paid. That is Wichita Royalty Company Property No. 93.

Mr. Humphrey:
I offer the check in evidence, Plaintiff's Exhibit 98.

PLAINTIFF'S EXHIBIT 98.

Wichita Falls, Texas, 11-1-1926 No. .... K-24 The City National Bank of Wichita Falls, Pay to the order of A. A. Peard, $160.00 (Stamped) 606 This check is in full settlement as shown hereon. Acceptance bb indorsement constitutes receipt in full. (Signed) G. W. Peckham Indorsed A. A. Peard (Perforated) Paid 11-9-26 Indorsed Pay Any Bank Or Banker. Previous Indorsements Guaranteed Nov. 3, 1926 Citizens State Bank, Vici, Oklahoma. First National Bank Woodward, Okla. Indorsements Guaranteed. Security National Bank Clearing House Paid Nov. 9, 1926, First National Bank Fort Worth Texas, 37-1 R. C. Martin, Cashier. Prior Indorsements Guaranteed.

1007

The Witness:
The assignment of an oil and gas lease which you now hand me, dated October 8, 1926, signed by G. W. Peck-

ham, transferred to the Wichita Royalty Company, corresponds with the copy of the voucher record as to the consideration for this $160.00 check. The deed has been properly executed and recorded.

Mr. Humphrey:

We offer the deed in evidence, PLAINTIFF'S EXHIBIT 99.

Assignment Of Oil And Gas Lease.

From George W. Peckham to Wichita Royalty Company. Consideration $1.00, and other good and valuable considerations.

Dated October 8, 1926.

Conveying the south half of the northeast quarter of the east one-half and the southeast quarter of the southeast quarter section 35, township 19, Range 21 west, containing 80 acres.

Filed for record November 26, 1926 at 9:00 o'clock A. M. and recorded in book 17, page 382 of the records of Ellis County, Oklahoma.

The Witness:

I was not able to find the check from George Peckham's files where he paid the remainder of this item, I have not been able to secure the records of the
1008 Security National Bank.

I do not know F. O. Harrell personally, he is an oil operator and broker. The record indicates that he had some dealings with George Peckham. The instrument you now hand me is a royalty deed from E. Polk and wife to F. O. Harrell dated October 9, 1926, conveying to F. O. Harrell and Walter Allen a one-half interest in and to all of the oil and gas and other minerals under

the southwest sixty acres of the E. Polk land, Abstract 717 in Archer County, Texas, which deed corresponds with the voucher record as to the royalty purchase. I have no transfer out of Harrell to Peckham or to the royalty company and do not know whether any was executed or not, or whether Mr. Harrell held that for the royalty company, except what the voucher and records show. Property No. 95, represents three-sixteenths interest in the leasehold of the east half of lot 10, North Anderson Ranch. The same situation prevails with reference to this property as to the one above. F. O. Harrell, on February 1, 1927, acquired an interest in this identical property from the Sun Company and there is not any conveyance from Harrell to Peckham or the royalty company that I could find.

Check No. 557, payable to the City National Bank for $1,920, signed by E. E. Scannell for the Wichita Royalty Company, dated December 7, 1926, the voucher record of the royalty company shows, royalty owned in full payment of one-half of royalty in six hundred and forty acres in Hartley County, Texas. There was a deed executed to the royalty company by Peckham for this item. This property was acquired from Joseph M. Perkins of Eastland, Texas. This royalty was conveyed to
1009 G. W. Peckham by an instrument signed by the grantee, Perkins, August 7, 1926, acknowledged September 29, 1926. G. W. Peckham conveyed the identical interest to the Wichita Royalty Company by instrument dated August 7, 1926, acknowledged December 15, 1926. Consideration was paid by the Wichita Royalty Company, check No. 557, issued December 7, 1926, payable to the City National Bank. On December 15, 1926, this check was applied to pay a draft drawn for the consideration and coming through the Texas State Bank of Eastland, Texas, the deed attached, and in the sum of $1,920.00. This item did not go through Mr. Peckham's bank account, it was handled by the collection department. That $1,920.00 check was applied to the exact purpose stated in the voucher records of the Wichita Roy-

alty Company; I am referring to Plaintiff's Exhibit 41, deed from Peckham to Wichita Royalty Company, plaintiff's Exhibit 40, check of $1,920.00, signed by Wichita Royalty Company on the City National Bank and the receipt, or remittance receipt of the City National Bank, Plaintiff's Exhibit 39.

The next check is No. 569, dated 1-11-27, for $300.00, signed by Wichita Royalty Company by E. E. Scannell, I have the voucher record on that check of the Wichita Royalty Company, it shows a payment on interest on loan at City National Bank, $300.00. The records of the City National Bank shows that their liability account was credited with $300.00 on January 15, and this item in no manner passed through Peckham's account. It was handled by the teller in Cage 19, Loan and dis-
1010 count teller. With reference to this matter, I am testifying from the records of the bank, the liability ledger of the Wichita Royalty Company with the City National Bank, as well as other items.

I now have two checks, one dated January 19, 1927, No. 571, payable to the City National Bank, $2,000.00, signed by Wichita Royalty Company by E. E. Scannell for trustee; and the other check dated February 19, 1927, No. 579, for $2,500.00, payable to the order of the bank, and likewise signed by E. E. Scannell, trustee for the Wichita Royalty Company, both checks drawn on the City National Bank. I have the deposit slips for those two checks, one of the deposit slips, the original, is in the handwriting of G. W. Peckham, $2,500.00; the other original deposit slip was made by the teller No. 7, Mr. Thomason. Those checks were charged to the deposit account of the Wichita Royalty Company and credited to the deposit account of G. W. Peckham.

Mr. Humphrey:

We offer the deposit slips in evidence.

PLAINTIFF'S EXHIBIT 100.

City National Bank Deposited by G. W. Peckham, Wichita Falls, Texas, 2-19-1927.

Checks as follows:

		2500.00
7275		1500.00
"7"	Total	4000.00

1011 PLAINTIFF'S EXHIBIT 101.

City National Bank Deposited by G. W. Peckham, Wichita Falls, Texas, 1-19-1927.

Checks as follows:

"7"	"RT"	2,000.00.

The Witness:

The voucher record on check No. 571 says, "Land improvement to apply on paving excess, Marlborough Addition." Voucher record on check No. 579, Land in fee to apply on paving strip of Marlborough Addition. The first one says in pencil, "Deposited to Peckham's account never returned." I do not know who put that there. I have not been able to find account of G. W. Peckham, either in the City National Bank or the Security National Bank, as to what became of that money; I am unable to find where Peckham applied same to the payment to the Marlborough Addition, the alleged purpose of the check. I am unable to determine whether Peckham was aware of their purpose, since I do not have the statements from the Security National Bank, and I am unable to tell from their records how he used the money, the records of the Security National Bank having been destroyed by the receiver.

Check No. 582, dated March 1, 1927, payable to the City National Bank for $500.00, signed Wichita Royalty Company by E. E. Scannell trustee, the voucher notation on that check shows, interest on note held by City National Bank. This was deposited to the account of G. W. Peckham on March 8, 1927. I have the deposit slip, it was taken by Mr. Thomason, Teller No. 7.

1012 Mr. Humphrey:

We offer the deposit slip in evidence, Plaintiff's Exhibit 102.

PLAINTIFF'S EXHIBIT 102.

City National Bank Deposited by G. W. Peckham, Wichita Falls, Texas, 3-8-1927.

Checks as follows:

"7"	Wich. Royalty	500.00
"RT"		

The Witness:

That check was charged to the deposit account of Wichita Royalty Company and credited to the deposit account of G. W. Peckham. I found on December 8, 1926, G. W. Peckham, from his personal account, paid the City National Bank interest due on Wichita Royalty Company note No. 81,992, for $25,000.00, said interest due and paid, amounted to $500.00, and I have Mr. Peckham's individual check for that amount.

Mr. Humphrey:

We offer the check in evidence.

DEFENDANT'S EXHIBIT 103.

88-130 11 Wichita Falls, Texas, 12-8-1926. The City National Bank of Wichita Falls "19" Pay to the order of City National Bank $500.00 K-27. This check is in full settlement as shown hereon. Acceptance by indorsement constitutes receipt in full. Signed G. W. Peckham No indorsement. Perforated paid 12-8-26.

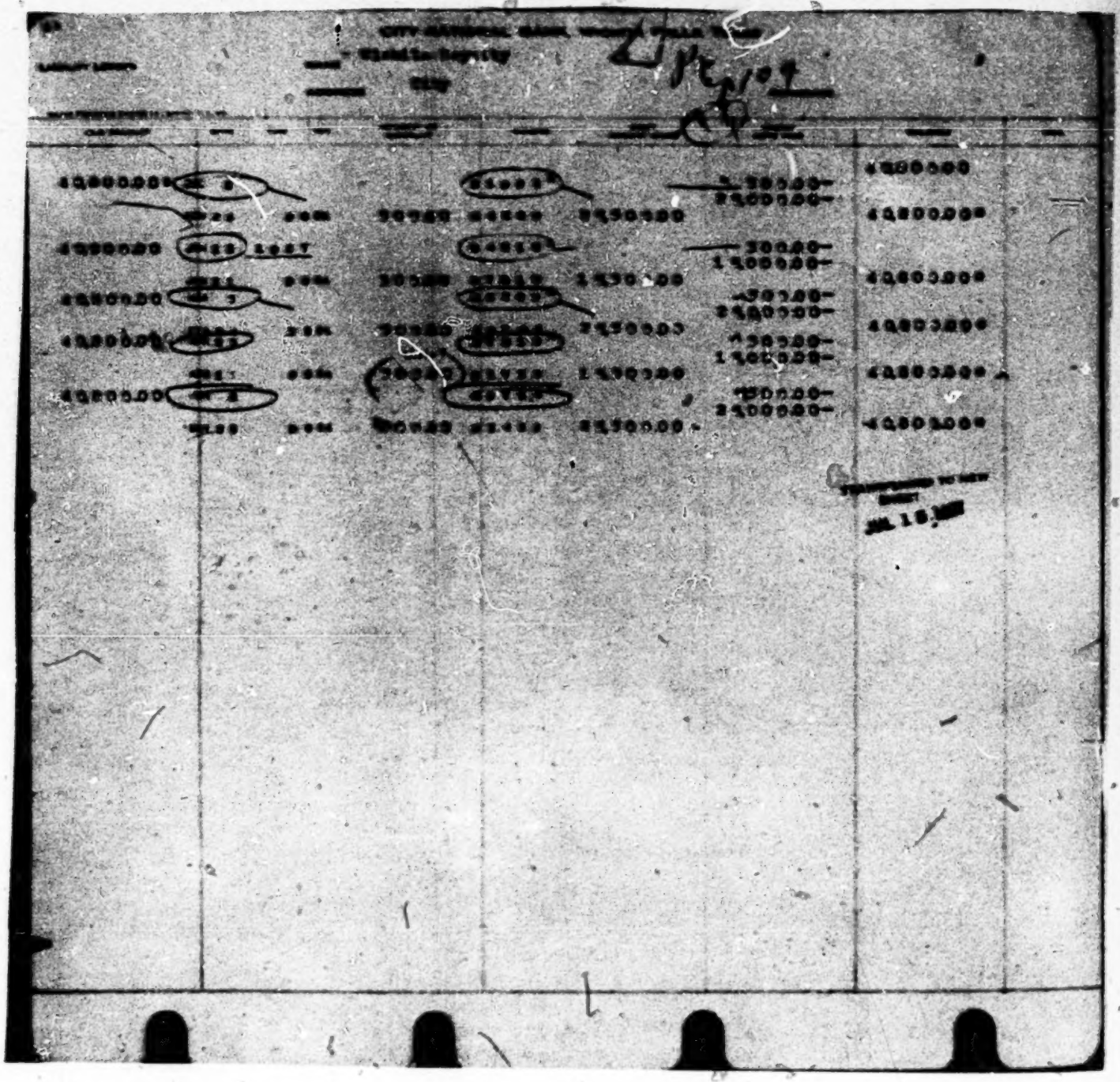
1013 The Witness:

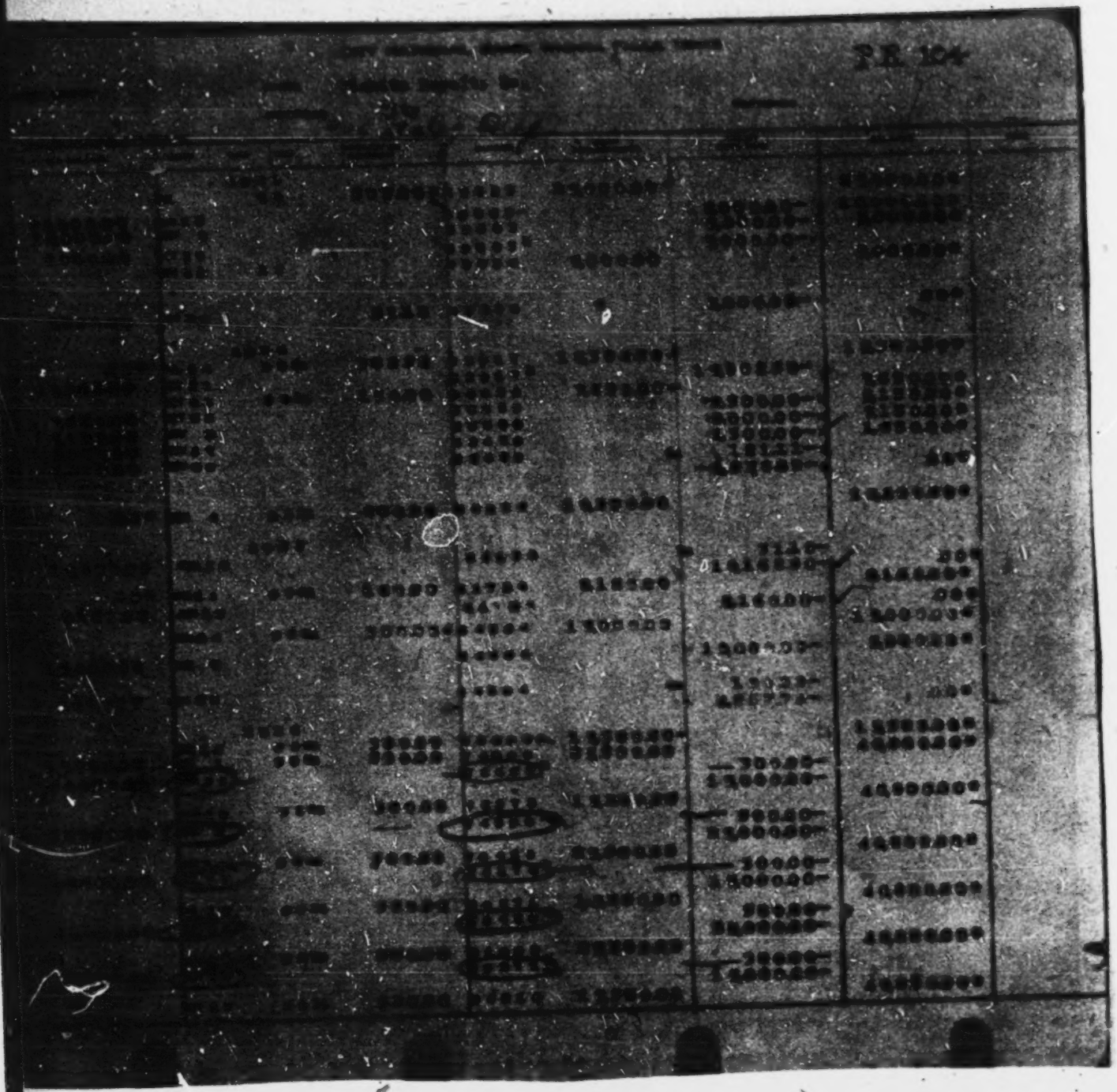
The liability record of the City National Bank, Wichita Royalty Company, shows this payment on December 8.

Mr. Humphrey:

We offer the liability record of the bank on that date, and ask that it be photostated.

PLAINTIFF'S EXHIBIT 104.

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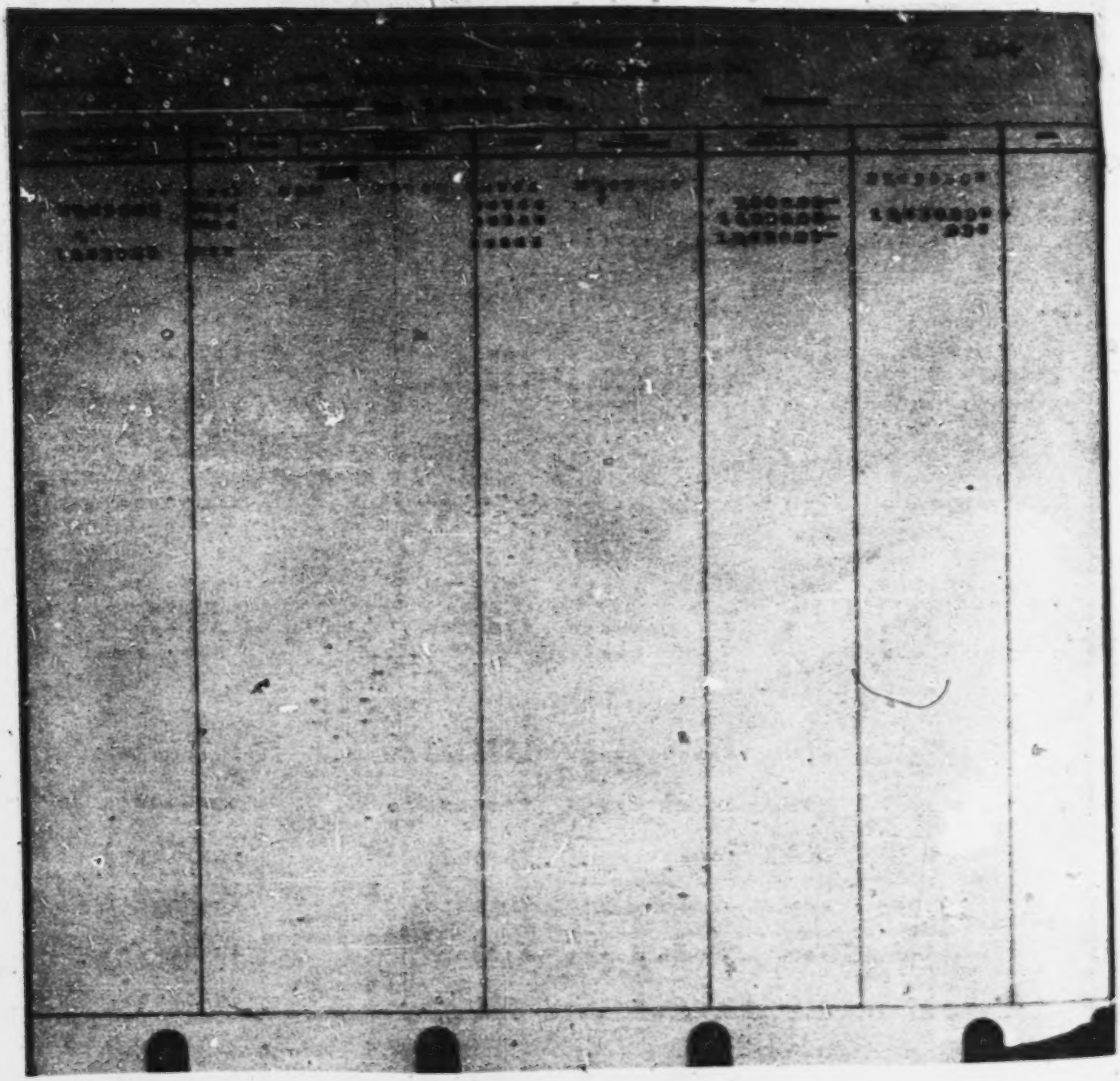


1017 The Witness:

The proceeds of that check was applied to the exact purpose as stated in the voucher record.

I have check No. 584, signed by the Wichita Royalty Company by E. E. Scannell, payable to the City National Bank for $500.00; I have the duplicate record of the voucher showing that the Wichita Royalty Company said the purpose of that check was at the time, interest expense, interest on $25,000.00 note for three months, held by City National Bank, $500.00. On March 3, 1927, G. W. Peckham applied this check to pay the interest on Wichita Royalty Company note No. 86,209 for $25,000.00, said interest due and paid amounting to $500.00. This item did not pass through Mr. Peckham's account, but was credited to pay interest on the note of Wichita Royalty Company and the liability ledger of the Wichita Royalty Company with the City National Bank shows that payment. That check was handled by teller No. 19, in the loan and discount department.

Mr. Humphrey:

We offer the check in evidence.

PLAINTIFF'S EXHIBIT 105.

(in pencil) Int Note 86209 Wichita Royalty Company "19" Wichita Falls, Texas, No. 584 (31) circled. March 1, 1927. When properly indorsed pay to the order of City National Bank, $500.00. To City National Bank, Wichita Falls, Texas. Wichita Royalty Company by E. E. Scannell, for trustee. Perforated paid 3-3-27.

1018 The Witness:

The liability ledger which shows payment of this $500.00 check and the credit to interest due on Wichita Royalty Company note, is shown by Plaintiff's Exhibit 104.

The next check, Wichita Royalty Company, check No. 591, dated 3-23-27, for $2,000.00, I am unable to find. I do find that was deposited to the account of George Peckham on March 23, 1927, and I have the deposit slip.

Mr. Humphrey:
We offer it in evidence.

PLAINTIFF'S EXHIBIT 106.

City National Bank Deposited by G. W. Peckham, Wichita Falls, Texas, 3-23-27.

Checks as follows:

	2,000.00
"7"	37.02
Total	$2,037.02

The Witness:
Teller No. 7 took that deposit, I am sure it was Mr. Thomason. That check was charged to the account of Wichita Royalty Company and credited to Mr. Peckham's individual account. The voucher record shows, in carbon copy, royalties owned, purchase royalties, etc., that is all it shows. There is a pencil notation, journal entry No. 26, 5-1-28, should have been charged to notes payable, City National Bank. The date of the check is March 23, 1927. The pencil memorandum says "See journal entry No. 26 5-1-28." Should have been charged to notes payable City National Bank. 5-1-28 is about a year and a month or a little over, longer than the date of the check.

Mr. Humphrey:
We offer in evidence the voucher record and ask that it be photostated.

1019 PLAINTIFF'S EXHIBIT 107.

(See JE No. 26 5/1/28) (Should have been charged to Notes payable-City National Bank) Royalties Owned Purchase royalty as follows: 2,000.00, March 23, 1927. 591 City National Bank 2,000.00, (Dep. to Cr. of G. W. P.) (End G. W. Peckham Paid 3/23/27).

1020 The witness:

That is the journal that is missing. I do not know whose handwriting that is in. I am unable to determine what became of the money, except that it was deposited to Mr. Peckham's account. I have not traced it, because I do not have all of his bank statements from other banks. Mr. Peckham's account was very active, he deposited lots of money and withdrew lots of money.

I have here two checks, No. 615, 1927, for $500.00, and No. 599, dated April 14, 1927, for $300.00. The voucher record of the Wichita Royalty Company shows that check No. 599, later on there has been a pencil notation "A" on there, also on the copy of the voucher. It says, "Interest account, interest on note given for money borrowed from City National Bank, $300.00; and the voucher record on check No. 615 says, "Interest expense, interest on note held by City National Bank, $500.00." Check No. 599-a for $300.00 was paid to the City National Bank on April 23, 1927, and their liability account with the City National Bank was given credit for that amount on the same day. Check No. 615 was paid on June 8, 1927, for $500.00, and their liability account was given credit for that on that same day. So the items in no manner passed through Mr. Peckham's account. They were handled by cage 19, loan and discount cage, and applied to pay interest on notes of Wichita Royalty Company. That is shown by the liability record of the Wichita Royalty Company.

1021 I have here a group of checks, No. 620, dated June 18, 1927 for $1,200.00, signed Wichita Royalty Company by E. E. Scannell; check No. 635, dated August 16, 1927, for $1,500.00, signed by the Wichita

Royalty Company by G. W. Peckham; check No. 650, dated October 14, 1927, for $2,409.00, signed by Wichita Royalty Company by E. E. Scannell; check No. 657 for $1,800.00, dated November 25, 1927, signed Wichita Royalty Company by E. E. Scannell, check No. 710 for $1,850.00, signed Wichita Royalty Company by E. E. Scannell. Check No. 752, dated September 27, 1928 for $424.66, signed Wichita Royalty Company by E. E. Scannell—I am familiar with that group of checks, totaling $9,174.00. I have the deposit slip showing the disposition of each check. They were deposited to the personal account of G. W. Peckham. Teller No. 7 took the deposit, that was Mr. Thomason. I have all of the original deposits except one. Deposit slip payable to G. W. Peckham for $1,200.00, 6-18-27, represents the first check, 620. Mr. Peckham wrote the deposit slip.

Mr. Humphrey:
Offer the deposit slip in evidence.

PLAINTIFF'S EXHIBIT 108.

City National Bank Deposited by G. W. Peckham, Wichita Falls, Texas, 6-18-1927.

Checks as follows:

		1,200.00
"7"	Total	$1,200.00.

The Witness:
The next check, 635, dated August 16, 1927 for $1,500.00, the deposit slip was writen by Mr. Peckham.

Mr. Humphrey:
Offer the deposit slip in evidence.

1022 PLAINTIFF'S EXHIBIT 109.

City National Bank Deposited by G. W. Peckham, Wichita Falls, Texas, 8-16-1927.

Checks as follows:

		1,500.00
"7"	Total	$1,500.00.

The Witness:
The next check, 650, for $2,400.00, I have a deposit slip for it, written by the teller.

Mr. Humphrey:
We offer the deposit slip in evidence, "Plaintiff's Exhibit 110."

PLAINTIFF'S EXHIBIT 110.

City National Bank Deposited by G. W. Peckham, Wichita Falls, Texas, 10-15-27.

Checks as follows:

"7"	Us	$2,400.00
Thomason.		

The Witness:
Deposit slip for $1,800.00, is in the handwriting of George Peckham.

Mr. Humphrey:
We offer the deposit slip in evidence.

PLAINTIFF'S EXHIBIT 111.

City National Bank Deposited by G. W. Peckham, Wichita Falls, Texas, 11-25-1927.

Checks as follows:

		$1,800.00
"7"	Total	$1,800.00

Mr. Humphrey:
Next offer in evidence Plaintiff's Exhibit 112.

1023 PLAINTIFF'S EXHIBIT 112.

City National Bank Deposited by G. W. Peckham, Wichita Falls, Texas, 4-23-1928.

Checks as follows:

"7"	US Thomas—	$1,850.00

The Witness:
This deposit slip for $424.66 represents check No. 752.

Mr. Humphrey:
I offer the deposit slip in evidence.

PLAINTIFF'S EXHIBIT 113.

City National Bank Deposited by G. W. Peckham, Wichita Falls, Texas, 9-27-1928.

Checks as follows:

WRCo	424.66.

The Witness:

Check No. 620 says, notes payable to apply on note for mony borrowed from City National Bank, $1,200.00; check No. 635 says, notes payable to apply on notes held by City National Bank, $1,500.00; Check No. 650, notes payable to apply on money borrowed from City National Bank, $2,400.00. Check No. 657, interest expense to interest on notes held by City National Bank, $1,800.00; Check No. 710, this is in the original typing, notes payable to apply on indebtedness of City National Bank, interest and principal $1,850.00.

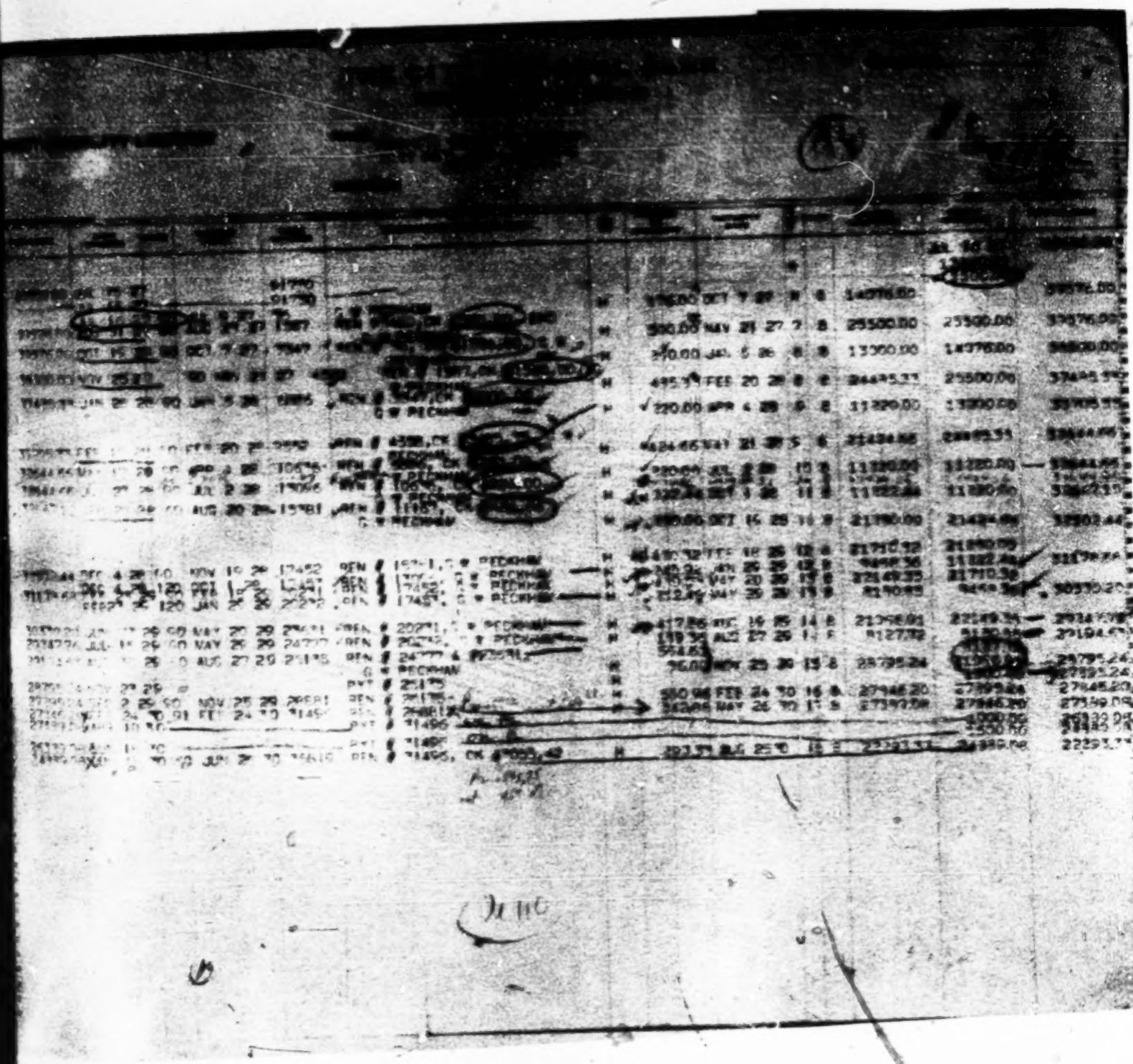
The voucher memorandum I have read is in carbon.

Check No. 752, shows interest expense on notes
1024 held by City National Bank, $424.00. None of those checks were applied by the bank, to notes payable, the identical checks themselves, they were all deposited to the credit of G. W. Peckham. From the account of G. W. Peckham, I can see what he did with this money. The total amount is $9,174.66. On August 31, 1927, Mr. Peckham paid on a note, No. 93,429, $500.00 for interest, out of his personal account. On October 19, 1927, he paid out of his personal account on a note No. 3,-347 $1,336.00. That was on notes in the amount of $13,-800.00, on the Wichita Royalty Company. Both of these notes were payments—both of these payments were on notes of the Wichita Royalty Company. The date of the next payment is October 19, 1927, $1,336.00. $1,060.00 applied on principal and $276.00 on interest. The next payment on November 25, 1927, applied on notes No. 4,-558 for $25,000.00 of the Wichita Royalty for $1,500.00. $1,000.00 was principal and $500.00 was interest. It was paid out of the personal account of G. W. Peckham. On February 15, 1928, G. W. Peckham's personal check for $3,485.33 and that was applied on Note No. 7552 for $24,-000.00 of the Wichita Royalty Company, $3,000.00 was on principal and $485.33 was interest. On September 27, 1928, Mr. Peckham paid from his personal account on Note No. 15,381, for $21,000.00 for the Wichita Royalty Company, $424.66, which was credited on interest. These

payments were made by Peckham individually on notes of the Wichita Royalty Company owing the City National Bank. I am testifying from the liability ledger and Mr. Peckham's check, which show those payments. That is the liability ledger of the Wichita Royalty Company with the bank.

Mr. Humphrey:

We offer in evidence the liability ledger, PLAINTIFF'S EXHIBIT 114.



1027 The Witness:

This sheet covers all of these payments. The individual payments that I have detailed of Mr. Peckham's aggregate $7,245.99. The difference between the individual payments made by Peckham on the note of the Wichita Royalty Company and the amount of the checks which I have exhibited to you, of the Wichita Royalty Company, which was transferred to Mr. Peckham's personal account is $1,929.67. On some of these there is a difference between the voucher of the Wichita Royalty Company with reference to some of these notes, one apparent difference is check No. 710 for $1,850.00, the copy of the voucher was in the original typing instead of in carbon.

Mr. Humphrey:

I offer the following checks, which have been identified by Mr. Carson, drawn on the individual account of G. W. Peckham and paid and credited on the notes of the Wichita Royalty Company owing to the City National Bank, as follows:

PLAINTIFF'S EXHIBIT 115.

Wichita Falls, Texas Aug. 31, 1927, No. .... "19" The City National Bank of Wichita Falls. Pay to the order of Int. $500.00 (Signed) G. W. Peckham Perforated Paid 8-31027.

PLAINTIFF'S EXHIBIT 116.

Wichita Falls, Texas 10-19-27 No. .... "19" The City National Bank of Wichita Falls. Pay to the order of On Note 1076.00 Int. 260.00 $1336.00 Perforated Paid 10-19-27 Signed G. W. Peckham.

1028 The Witness:

The payment of that check does not correspond with the amount of the check, the principal of the note was credited with $1060.00 and interest $276.00.

Mr. Humphrey:

We offer in evidence Plaintiff's Exhibit 117.

PLAINTIFF'S EXHIBIT 117.

Wichita Falls, Texas, Nov. 25, 1927, No. .... "19" The City National Bank of Wichita Falls Pay to the order of City National Bank $1500.00 Perforated Paid 11-25-27 Signed G. W. Peckham.

Mr. Humphrey:

We next offer in evidence check dated 2-15-28.

PLAINTIFF'S EXHIBIT 118.

Wichita Falls, Texas, 2-15-1928 No. .... "19" The City National Bank of Wichita Falls. Pay to the order of City National Bank $3485.33 (Perforated Paid 2-15-28. Signed G. W. Peckham (P) K-63.

The Witness:

The next check is dated 9-27-28, for $424.66, signed by G. W. Peckham.

Mr. Humphrey:

We offer it in evidence.

PLAINTIFF'S EXHIBIT 119.

Wichita Falls, Texas, 9-27-28. The City National Bank of Wichita Falls. Pay to the order of City National Bank $424.66. This check is in full settlement, etc. (Signed) G. W. Peckham Perforated Paid 9-27-28.

The Witness:

There was a difference of $1,929.67, which I was unable to trace.

Mr. Rogers:

We offer all of those checks in evidence, marked "Defendant's Exhibits 117, 118, 119, 120, 121, and 122," as follows:

DEFENDANT'S EXHIBIT 117.

Wichita Royalty Company, Wichita Falls, Texas June 18, 1927 No. 620 (34) in circle (Green pencil) Dep to cr of GWP 6-18-27 When properly indorsed pay to the order of City National Bank "7" $1200.00. To the City National Bank, Wichita Falls, Texas. Wichita Royalty Company, by E. E. Scannell for trustee. Perforated Paid 6-18-27.

DEFENDANT'S EXHIBIT 118.

Wichita Royalty Company, Wichita Falls, Texas, August 16, 1927 No. 635. (Green pencil) Dep to cr of GWP 8-16-27 "7" When properly indorsed pay to the order of City National Bank To the City National Bank, $1,500.00 Wichita Falls, Texas. Wichita Royalty Company, by G. W. Peckham, trustee. Perforated Paid 8-16-27.

DEFENDANT'S EXHIBIT 119.

Wichita Royalty Company, Wichita Falls, Texas. No. 650 October 14, 1927 (Green pencil) Dep to cr of GWP 10-15-27 "7" When properly indorsed pay to the order of City National Bank $2,400.00 To the City National Bank
Wichita Falls, Texas. Wichita Royalty Com-
1030 pany by E. E. Scannell for trustee. (Perforated) Paid 10-15-27.

DEFENDANT'S EXHIBIT 120.

Wichita Royalty Company, Wichita Falls, Texas. No. 657 (Green pencil) Dep to cr of GWP 11-25-27 November 25, 1927 "7" When properly indorsed * * * to order of City National Bank $1800.00 To the City National Bank, Wichita Falls, Texas (37) in circle Wichita Royalty Company, by E. E. Scannell for trustee. (Perforated) Paid 11-25-27.

DEFENDANT'S EXHIBIT 121.

Wichita Royalty Company, Wichita Falls, Texas No. 710 (38) circled (Green pencil) Dept to cr GWP on 4-23-28 April 20, 1928 When properly indorsed * * * order of City National Bank $1850.00 To the City National Bank Wichita Falls, Texas. Wichita Royalty Company by E. E. Scannell for trustee. (Perforated Paid 4-23-28.

DEFENDANT'S EXHIBIT 122.

Wichita Royalty Company, Wichita Falls, Texas No. 752 (31) circled (Red Pencil) Dep to cr of GWP 9-27-28 $424.66. When properly indorsed pay to the order of City National Bank To the City National Bank, Wichita Falls, Texas: Wichita Royalty Company by E. E. Scannell for trustee. (Perforated) Paid 9-27-28 Dep in City Nat'l Bank to credit of G. W. Peckham.

The Witness:

The next check is No. 628, and the next 680, and the next 707. 628 dated July 16, 1927, for $1,500.00, Wichita Royalty Company signed by E. E. Scannell, the voucher notation of the Wichita Royalty Company shows "Interest Expense on notes held by the City National Bank $1,500.00." On July 16 1927, this check was applied on Wichita Royalty Company note No. 91,730, amounting to

$1,500.00 and held by the City National Bank, to
1031 pay interest $300.00, and to apply on principal $1,200.00; in no manner did this check pass through Mr. Peckham's account, it was applied directly on the note of the Wichita Royalty Company.

Mr. Humphrey:
Offer the check in evidence.

PLAINTIFF'S EXHIBIT 120.

Wichita Royalty Company, Wichita Falls, Texas, No. 628 (Green pencil) Note 91720 July 16, 1927 "19" When properly indorsed pay to the order of City National Bank $1,500.00 To the City National Bank, Wichita Falls, Texas, Wichita Royalty Company by E. E. Scannell for trustee. (Perforated Paid 7-16-27.

The Witness:
The next check is 682, dated January 28, 1928, for $2,000.00, signed Wichita Royalty Company by E. E. Scannell, the voucher notation shows, "Notes payable to apply on note at City National Bank, $2,000.00." On January 28, 1928, this was credited on note No. 6,886, of the Wichita Royalty Company, $1,740.00 on principal and $260.00 on interest. It was applied direct and in no manner passed through the account of George Peckham. It was handled by Teller No. 19, which was the loan and discount teller. Check No. 628 was handled in the same way. Both of the checks were applied in accordance with the voucher notation kept by the Wichita Royalty Company.

Mr. Humphrey:
We offer the check in evidence.

1032 PLAINTIFF'S EXHIBIT 121.

Wichita Royalty Company, Wichita Falls, Texas, No. 682 (Green pencil) Note 3347 (31) circled January 28, 1928 When properly indorsed pay to the order of City National Bank $2,000.00 To the City National Bank, Wichita Falls, Texas, Wichita Royalty Company by E. E. Scannell for trustee. Perforated Paid 12-8-1928.

The Witness:

The next check is No. 717, signed Wichita Royalty Company by E. E. Scannell, payable to City National Bank, $220.00, the voucher notation shows, "Interest account, to payment of interest on note at City National Bank, $220.00." On May 17, 1928, that was paid on note No. 10,-636 for $11,000.00, Wichita Royalty Company and that applied on the interest. In no manner did it pass through the account of G. W. Peckham. This was handled by teller No. 19, and applied direct.

Mr. Humphrey:

We offer in evidence check No. 717, Plaintiff's Exhibit 122.

PLAINTIFF'S EXHIBIT 122.

Wichita Royalty Company, 1002 Staley Building, Wichita Falls, Texas No. 717 May 17, 1928, Circled (Green pencil) Int note 6886 When properly indorsed pay to the order of City National Bank "19" $220.00 To the City National Bank, Wichita Falls, Texas Wichita Royalty Company by E. E. Scannell for trustee. (Perforated Paid 5-17-28.

1033 The Witness:

Check No. 721, dated June 1, 1928 for $424.66, signed by E. E. Scannell, voucher notation shows it was

given for interest on note at the City National Bank, for $424.66. One June 1, 1928, that was applied on note No. 11,167, for $21,000.00, of the Wichita Royalty Company and was in payment of interest and was applied direct and did not pass through the account of G. W. Peckham, but went direct to the credit of Wichita Royalty Company's note and was handled by Teller No. 19.

Mr. Humphrey:
We offer it in evidence.

PLAINTIFF'S EXHIBIT 123.

Wichita Royalty Company, 1002 Staley Building, Wichita Falls, Texas No. 721 June 1, 1928 "19" (39) circled (Green pencil) Int on note 7552. $424.66 When properly indorsed pay to the order of City National Bank To the City National Bank, Wichita Falls, Texas, Wichita Royalty Company by E. E. Scannell, for trustee. Perforated Paid 6-1-28.

The Witness:
Check No. 733, signed by E. E. Scannell, dated July 23, 1928; the voucher notation shows, "Interest expense, interest on note held by City National Bank, $220.00." On July 23, 1928 that applied on note No. 13,096 for $11,000.00 of the Wichita Royalty Company and was in payment of interest. Credited on the note, on the interest due on the note of the Wichita Royalty Company and did
1034 not pass through Mr. Peckham's account.

Mr. Humphrey:
We offer the check in evidence, "Plaintiff's Exhibit 124."

PLAINTIFF'S EXHIBIT 124.

Check, Wichita Royalty Company, Wichita Falls, Texas, 1002 Staley Building, No. 733 "19" (31) circled (in green pencil) Int Note 10636 $220.00 When properly indorsed pay to the order of City National Bank To the City National Bank, Wichita Falls, Texas, Wichita Royalty Company, by E. E. Scannell for trustee. Perforated Paid 7-23-28.

The Witness:

The next check, 768, dated December 4, 1928 for $2,000.00, signed by E. E. Scannell, Wichita Royalty Company, voucher notation shows "Notes payable to apply on notes payable, City National Bank, $2,000.00." On December 4, 1928 it was applied on note No. 17,453, for $11,000.00 of the Wichita Royalty Company. That was on principal $1,531.64 and interest $468.36, making a total of $2,000.00; the check was applied against the obligation of the Wichita Royalty Company and did not pass through the account of G. W. Peckham.

Mr. Humphrey:

We offer the check in evidence.

PLAINTIFF'S EXHIBIT 125.

Wichita Royalty Company, 1002 Staley Building, Wichita Falls, Texas. No. 768 December 4, 1928 (310 circled) (Green pencil) Note 1538 and 13096 $2,000.00
1035 When properly indorsed pay to the order of City National Bank To the City National Bank, Wichita Falls, Texas. Wichita Royalty Company by E. E. Scannell for trustee "19" (Perforated) Paid 12-4-28.

The Witness:

Check No. 791 for $1,500.00 dated February 19, 1929, signed by E. E. Scannell, voucher notation shows, "Notes payable to apply notes held by City National Bank, $1,500.00." On February 23, 1929, that was applied on note

No. 20,232, in the amount of $9,468.36, that being the note of the Wichita Royalty Company. On principal $1,287.51, interest, $212.49, making a total of $1,500.00. That was applied direct to the note of the Wichita Royalty Company and did not pass through the account of G. W. Peckham.

Mr. Humphrey:
We offer the instrument in evidence.

PLAINTIFF'S EXHIBIT 126.

Wichita Royalty Company, 1002 Staley Building, Wichita Falls, Texas. No. 791. February 19, 1929 "19" (31) Circled When properly indorsed pay to the order of City National Bank $1,500.00 To the City National Bank, Wichita Falls, Texas. Wichita Royalty Company by E. E. Scannell for trustee. (Perforated) Paid 2-23-29.

The Witness:
Check No. 814 for $1,500.00, dated June 7, 1929, signed by E. E. Scannell, the voucher notation of the Wichita Royalty Company on that check, interest ex-
1036 pense, to interest on notes at the City National Bank, $1,500.00." On June 7, 1929, that was applied on Note No. 23,631 for $21,000.00, Wichita Royalty Company, and it was on principal, $350.65, and on interest $1,149.35, making a total of $1,500.00. That was applied direct to the Wichita Royalty Company's note and did not pass through the account of G. W. Peckham.

Mr. Humphrey:
We offer the check in evidence.

PLAINTIFF'S EXHIBIT 127.

Wichita Royalty Company, 1002 Staley Building, Wichita Falls, Texas No. 814, June 7, 1929 (Stamped) June 8.

1928 (Green pencil) Note 20231 (Pencil) 3344 R (31) circled "19" When properly indorsed pay to the order of City National Bank $1,500.00 "2" To the City National Bank, Wichita Falls, Texas. Wichita Royalty Company, by E. E. Scannell for trustee. Perforated Paid 6-8-29.

The Witness:

The next one is 824, dated 7-15-29, for $212.49, signed by E. E. Scannell. The voucher notation shows interest expense on notes of company, $212.49. On July 15, 1929 that was applied on note No. 24,777 in the amount of $8,-180.85. That was a note of the Wichita Royalty Company, and there was $53.13 on principal and $159.36 on interest, total of $212.49. That was applied direct to the note of the Wichita Royalty Company and did not pass through the account of G. W. Peckham.

Mr. Humphrey:

We offer the check in evidence.

1037 PLAINTIFF'S EXHIBIT 128.

Wichita Royalty Company, Wichita Falls, Texas, 1002 Staley Building No. 824, July 15, 1929 (31) in circle "19" (Green pencil) Note 20232 $212.49 When properly indorsed pay to the order of City National Bank To the City National Bank, Wichita Falls, Texas Wichita Royalty Company, by E. E. Scannell, for trustee. (Perforated) Paid 7-15-29.

The Witness:

The next one is No. 836, dated August 30, 1929, for $1,-000.00 signed by E. E. Scannell, the voucher notation shows, "Notes payable to apply on note for money borrowed from City National Bank, $1,000.00." On August 20, 1929, that was applied on note No. 26,135, total amount of the note, $29,194.63, which was on principal $399.39, on interest, $600.61, making a total of $1,000.00. This

check was applied direct to the note of the Wichita Royalty Company, and did not pass through the account of G. W. Peckham.

Mr. Humphrey:
We offer the check in evidence.

PLAINTIFF'S EXHIBIT 129.

Wichita Royalty Company, 1002 Staley Building, Wichita Falls, Texas. No. 836 August 30, 1929 "19" (31) circled (Green pencil) Note 24777 and 23631. When properly indorsed pay to the order of City National Bank, Wichita Falls, Texas. $1,000.00. To the City National Bank, Wichita Falls, Texas. Wichita Royalty Company, by E. E. Scannell, for trustee) (Perforated) Paid 8-29-29.

1038 The Witness:
George Peckham died November 7, 1929, shortly after this check I have testified about for $1,000.00.
Check No. 856, dated 11-23-29, was given after Mr. Peckham's death. Mr. Scannell was appointed trustee to succeed Mr. Peckham.
The voucher notation with reference to check for $1,500.00, says, "that is on notes payable to apply on notes at the City National Bank, $1,500.00. Pencil notation shows $1,500.00 interest, $564.61, principal $935.39. On November 23, 1929 that was applied on note No. 26,135, and in the total amount of $28,795.24, and that applied on principal $1,500.00, that was applied direct to the note of the Wichita Royalty Company. That was the same running debt that the Wichita Royalty Company had owed.

Mr. Humphrey:
We offer the check in evidence.

PLAINTIFF'S EXHIBIT 130.

Wichita Royalty Company, 1002 Staley Building, Wichita Falls, Texas. No. 856, November 23, 1929 "19" (31) circled (Green pencil) Note 26135 $1,500.00 When properly indorsed pay to the order of City National Bank To the City National Bank, Wichita Falls, Texas Wichita Royalty Company by E. E. Scannell for trustee. (Perforated) Paid 11-23-29.

The Witness:

Check No. 856 was signed by E. E. Scannell as trustee. Check No. 880, dated January 24, 1930, payable to the order of Marlborough Addition, $1,500.00, signed
1039 Wichita Royalty Company by E. E. Scannell, the voucher shows, "Notes receivable, Texas Investment Company, loans to Texas Investment Company, in which Wichita Royalty Company owns one-half of the capital stock for one year at eight percent interest, money to be used for current obligations on Marlborough Addition, Wichita Falls, Texas, $1,500.00." The proceeds of that check was deposited to the account of the Texas Investment Company, Wichita Falls, Texas, January 25, 1930, and the voucher notation says, "To loan to Texas Investment Company." It was deposited to their credit. I do not know who made out the deposit slip.

Mr. Humphrey:

We offer the deposit slip in evidence, marked "Plaintiff's Exhibits 131 and 132."

PLAINTIFF'S EXHIBIT 131.

City National Bank Deposited by Texas Investment Co. of Wichita Falls, Wichita Falls, Texas, 1-25-1930.

Checks as follows:

Wichita Royalty Co.		1,500.00
N/P "6"		
Original 10	Total	$1,500.00

PLAINTIFF'S EXHIBIT 132.

(Check) Wichita Royalty Company, 1002 Staley Building, Wichita Falls, Texas. January 24, 1930 No. 880 (29) circled When properly indorsed pay to the order of Marlborough Addition $1500.00 To the City National Bank, Wichita Falls, Texas. Wichita Royalty Company by E. E. Scannell for Trustee. Perforated Paid 1-25-30 "6".

1040 The Witness:

The next check is 890 for $1,000.00, signed Wichita Royalty Company by E. E. Scannell; the voucher notation is "Notes payable to apply on note at City National Bank, interest expense. Interest on $26,846.20, balance from February 24, 1930 for ninety days, $1,000.00. That voucher, as well as the check, was made during Mr. Scannell's administration of the Wichita Royalty Company. The check was applied on the note, Wichita Royalty Company, held by City National Bank, principal $457.12, and interest $542.88. Applied on Note No. 31,-496.

Mr Humphrey:

We offer it in evidence.

PLAINTIFF'S EXHIBIT 133.

Wichita Royalty Company, 1002 Staley Building, Wichita Falls, Texas. No. 890 February 24, 1930 (31) circled in pencil Note 28881 (in green pencil) "19" When properly indorsed pay to the order of City National Bank $1,000.00 To the City National Bank, Wichita Falls, Texas. Wichita Royalty Company by E. E. Scannell, for trustee. Perforated Paid 2-24-30.

Mr. Humphrey:

We also offer in evidence, and ask that it be photostated, the voucher notation from the duplicate records, check 880.

(Marked "Plaintiff's Exhibit 134" as follows:)

1041 PLAINTIFF'S EXHIBIT 134.

Notes Receivable—Texas Investment Company: To Loan to the Texas Investment Company (in which Wichita Royalty Company owns One-Half of the Capital Stock) for one year at 8% interest. Money to be used for current obligations, etc., on Marlborough Addition, Wichita Falls, Texas. $1,500.00, 880, January 24, 1930 Marlborough Addition $1,500.00. City P1 107. Indorsed Marlborough Addition, Texas Investment Co. of Wichita Falls. Paid 1/25/30.

1042 Mr. Humphrey:

Also the voucher notation, check No. 890, and ask that it be photostated.

(Marked "Plaintiff's Exhibit 135" as follows:)

PLAINTIFF'S EXHIBIT 135.

Notes Payable:	$ 457.12
To apply on Note at the City National Bank.	
Interest Expense:	542.88
Interest on $26,846.20 balance from February 24, 1930, for 90 days.	$1,000.00

890

February 24, 1930. City National Bank $1,000.00. No indorsement—Paid 2-24-30—City On Note 28881 Prin. 457.12. Int. 542.88.

1043 The Witness:

The books of the City National Bank show the indebtedness owing by the Wichita Royalty Company

at the date of the application of check No. 890 for $1,000.00 to be $27,848.20, both principal and interest handled together. On Mr. Scannell's books the voucher notation shows, interest on note for that same amount. That amount is shown, when he gave his check on February 24, 1930, that shows a difference of $1,000.00 on the account, which is the amount of this check here; so that deducting the amount of the check his books correspond directly with the records of the City National Bank as to the amount of that note. That was made after Mr. Scannell became trustee and after Mr. Peckham died.

Check No. 898, dated 4-10-30, for $1,000.00, signed by E. E. Scannell, the voucher notation shows, "Notes payable, to apply on note at City National Bank, $1,000.00." Interest expense on note at City National Bank, none. The proceeds of that check was applied on principal of the Wichita Royalty Company note No. 4,196, amount $1,000.00; the note was $27,389.08, and after applying this check it reduced the note to $26,389.08. This was the same indebtedness owing at the time George Peckham was trustee that Mr. Scannell was paying on.

Mr. Humphrey:

We offer the voucher notation in evidence, and ask that it be photostated. Plaintiff's Exhibit 136.

1044 PLAINTIFF'S EXHIBIT 136.

Notes Payable: $1,000.00 To apply on note at the City National Bank. Interest Expense: None. On note at the City National Bank. 898. April 10, 1930. City National Bank $1,000.00. (Exhibit 13) No Indorsement—Paid 4-10-30. City—Pay on note No. 31496.

1045 Mr. Humphrey:

We also offer the check in evidence.

PLAINTIFF'S EXHIBIT 137.

Wichita Royalty Company, 1002 Staley Building, Wichita Falls, Texas. No. 898. April 10, 1930 (31) circled (In green pencil) Note 31496 $1,000.00. When properly indorsed pay to the order of City National Bank To the City National Bank, Wichita Falls, Texas. Wichita Royalty Company by E. E. Scannell for trustee (Perforated) Paid 4-30-30.

The Witness:

I have check No. 908, dated May 13, 1930, of Wichita Royalty Company, signed by E. E. Scannell for $500.00; voucher notation on that item shows, carbon copy says, interest on Marlborough note $500.00, up at the top, and in ink says, "Interest receivable, Texas Investment Company of Wichita Falls." I have a deposit slip deposited to the account of the Texas Investment Company dated May 13, their account received credit for it on the 14th.

Mr. Humphrey:

We offer the deposit slip in evidence.

PLAINTIFF'S EXHIBIT 138.

Wichita Royalty Company, 1002 Staley Building, Wichita Falls, Texas. May 13, 1930, No. 908 "18" (30) circled When properly indorsed pay to the order of Texas Investment Company of Wichita Falls, Texas. $500.00. To the City National Bank, Wichita Falls. Wichita Royalty Company by E. E. Scannell for trustee. (in pencil) cr a/c Texas Inv. Co. (Perforated) Paid 5-14-30.

1046 PLAINTIFF'S EXHIBIT 139.

City National Bank Deposited by Texas Investment Co. Wichita Falls, Texas, 5-13-1930. Checks as follows: Wichita Royalty Co. $500.00 Original 41 Total.

Mr. Humphrey:

Also offer in evidence the voucher notation, and ask that it be photostated, Wichitar Royalty Company.

(Marked "Plaintiff's Exhibit 140" as follows:)

PLAINTIFF'S EXHIBIT 140.

Notes Receivable:

Texas Investment Co. of Wichita Falls. Interest on Marlborough Notes 500.00, 908. P1 108 May 13, 1930. Texas Investment Company of Wichita Falls, Texas 500.00 City—Indorsed Cr a/c Texas Invest. Co. J. T. H. Paid 5-14-30.

1047 The Witness:

The Texas Investment Company was the successor of Marlborough Addition. The original owners of the Marlborough Addition were, J. A. Kemp, J. T. Harrell, W. H. Peckham and G. W. Peckham; later on J. T. Harrell and J. A. Kemp and G. W. Peckham and W. H. Peckham; later on J. T. Harrell and J. A. Kemp and G. W. Peckham organized the Texas Investment Company or started it prior to the time of George Peckham's death, Mr. Peckham signed the charter. The corporation was formed to take over the assets of the Marlborough Addition, and this is the Texas Investment Company that the money was credited to.

The next check, 920, for $1,500.00, signed Wichita Royalty Company dated June 14, 1930, payable to the order of City National Bank, the voucher notation says, "Notes payable to apply on indebtedness $1,500.00, on checks dated June 14, and canceled paid June 18, 1930. On June 18, 1930, this check in the amount of $1,500.00 was credited on the note of the Wichita Royalty Company, No. 31,496, for $26,389.80. After applying this check it left a balance of $24,889.08. Applied on the note of the Wichita Royalty Company in June, 1930.

Mr. Humphrey:

We offer the check in evidence.

PLAINTIFF'S EXHIBIT 141.

Wichita Royalty Company, 1002 Staley Building, Wichita Falls, Texas. No. 920 June 14, 1930 "19" (31) circled (H) (In Green pencil) Note 31496 $1500.00. When
1048 properly indorsed pay to the order of City National Bank To the City National Bank, Wichita Falls, Texas. Wichita Royalty Company by E. E. Scannell for trustee (Perforated) Paid 6-18-30.

Mr. Humphrey:

Also voucher notation, and ask that it be photostated.

(Marked "Plaintiff's Exhibit 142" as follows:)

PLAINTIFF'S EXHIBIT 142.

Notes Payable:

To apply on indebtedness $1500.00, 920. June 14, 1930. City National Bank $1500.00. On note No. 31496—City Plaintiff's Exhibit 14—No Ind. Paid June 16, 1930.

1049 The Witness:

The next item is check No. 930 for $3,055.42, payable to the City National Bank, Royalty Company, E. E. Scannell. The voucher notation, "Notes payable to payment on note and interest $3,055.42." The ink notation up here says, "Principal $2889.08, interest $166.34, total $3,055.42." That check was applied in accordance with the voucher on July 15, 1930, Wichita Royalty Company note No. 31,496, interest $293.33. No, I testified wrong, the interest is $459.67, principal $2,595.75, making a total of $3,055.42. That left the amount of that note at that date $22,293.33, after applying this payment, which is the amount of the principal today, there has never been paid any more after that date, and the suit was filed shortly after that on the note.

Mr. Humphrey:

We offer the check in evidence.

PLAINTIFF'S EXHIBIT 143.

Wichita Royalty Company, 1002 Staley Building, Wichita Falls, Texas. July 14, 1930. No. 930. (31) circled "19" "2" (Green pencil) Note 31496. (Pencil) 3344 Will ——— When properly indorsed pay to the order of City National Bank $3,055.42. To the City National Bank, Wichita Falls, Texas Wichita Royalty Company, by E. E. Scannell for trustee. (In pencil) 686192 (Perforated) Paid 7-16-30.

Mr. Humphrey:

Also the voucher notation we offer in evidence, and ask that it be photostated, Plaintiff's Exhibit 144.

1050 PLAINTIFF'S EXHIBIT 144.

(Principal	2,889.08	
Interest	166.34	
Total	$3,055.42)	
		3,055.42
		930

July 14, 1930

City National Bank 3,055.42

Plaintiff's Exhibit 15.

City No end. Paid 7-16-30. Pay on note 31496.

1051 The Witness:

I have an item here for $6,000.00 check payable to W. C. Duncan, signed by W. L. Stewart Gill, Assistant Cashier, indorsed pay to the order of G. W. Peckham for Bristow Royalty, W. C. Duncan, indorsed G. W. Peckham, I have made an analysis of that transaction. That

money never went to the account of Wichita Royalty Company to my knowledge. There is not any record where that money was ever transferred from the account of the Wichita Royalty Company to Peckham's account in the City National Bank. The check was deposited direct to the credit of G. W. Peckham, in his individual ledger account, February 15, 1928, I have the original deposit slip, in the handwriting of G. W. Peckham, he made it out himself, and he was given credit for it in his individual account on February 15, 1928. The cashier's check was paid February 16, 1928. It is dated February 6, 1928.

Mr. Humphrey:

We offer the deposit slip in evidence, Plaintiff's Exhibit 145.

PLAINTIFF'S EXHIBIT 145.

City National Bank. Deposited by G. W. Peckham, Wichita Falls, Texas, 2-15-1928. Checks as follows: "7" 6,000.00.

The Witness:

This is the genuine indorsement of Mr. Peckham across the back of that check I am familiar with his handwriting. This is a cashier's check issued by the Wichita State Bank and Trust Company, payable to W.
1052 C. Duncan for $6,000.00, indorsed W. C. Duncan to the order of G. W. Peckham, and indorsed by G. W. Peckham and deposited to G. W. Peckham's personal account in the City National Bank.

Mr. Humphrey:

We offer the check in evidence.

PLAINTIFF'S EXHIBIT 146.

Wichita State Bank & Trust Co., 88-132 No. 12328. Wichita Falls, Texas, Feb. 6, 1928. Pay to the order of W. C. Duncan $6,000.00. Cashier's check (signed) W. L. Stewart Gill, Ass't Cashier. (Indorsed) Payable to order of G. W. Peckham for Bristow Royalty. W. C. Duncan, G. W. Peckham. (Perforated) paid 2-16-28.

The Witness:

After this lawsuit came up, I went into the matter to find out the history of it. This was on the Hattie Vaughan Royalty sale, to W. C. Duncan, at lease they were the agents. I have a check dated January 15, 1928, payable to White and Duncan for $300.00, signed by G. W. Peckham, and says, "Commission on Hattie Vaughan Royalty." This check is indorsed White and Duncan, through the Wichita State Bank and Trust Company and paid by the City National Bank on February 16, 1928.

Mr. Humphrey:

We offer the check in evidence.

PLAINTIFF'S EXHIBIT 147.

Wichita Falls, Texas, 2-15-1928. No. ——— k-61. The City National Bank of Wichita Falls. Pay to the order of White & Duncan $300.00. (Signed) G. W. Peckham. This check is in full settlement as shown hereon. Acceptance by indorsement constitutes receipt in full. Com. on Hattie Vaughan Royalty. (Indorsed) White & Duncan. Perforated paid 2-16-28.

1053

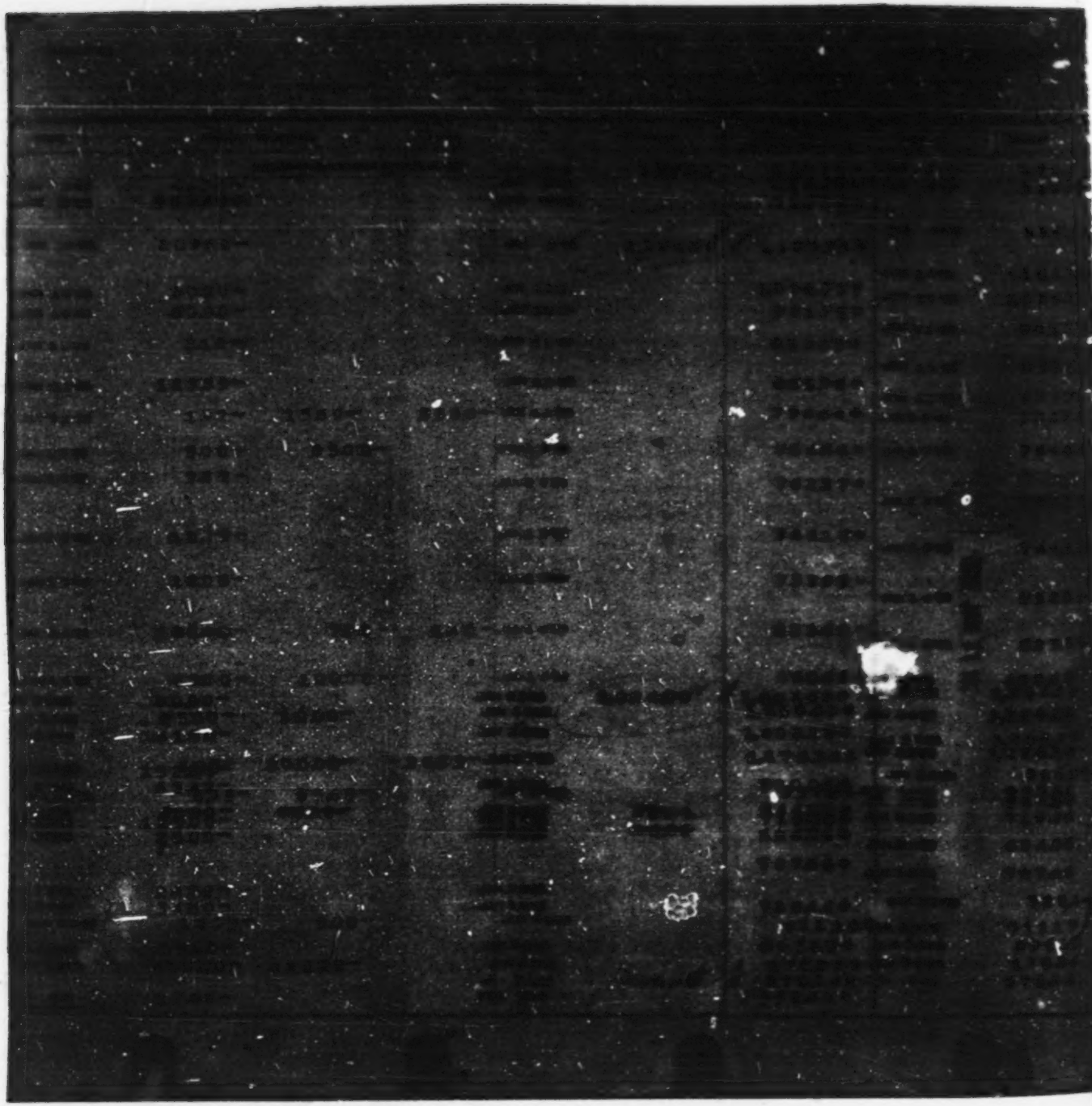
The Witness:

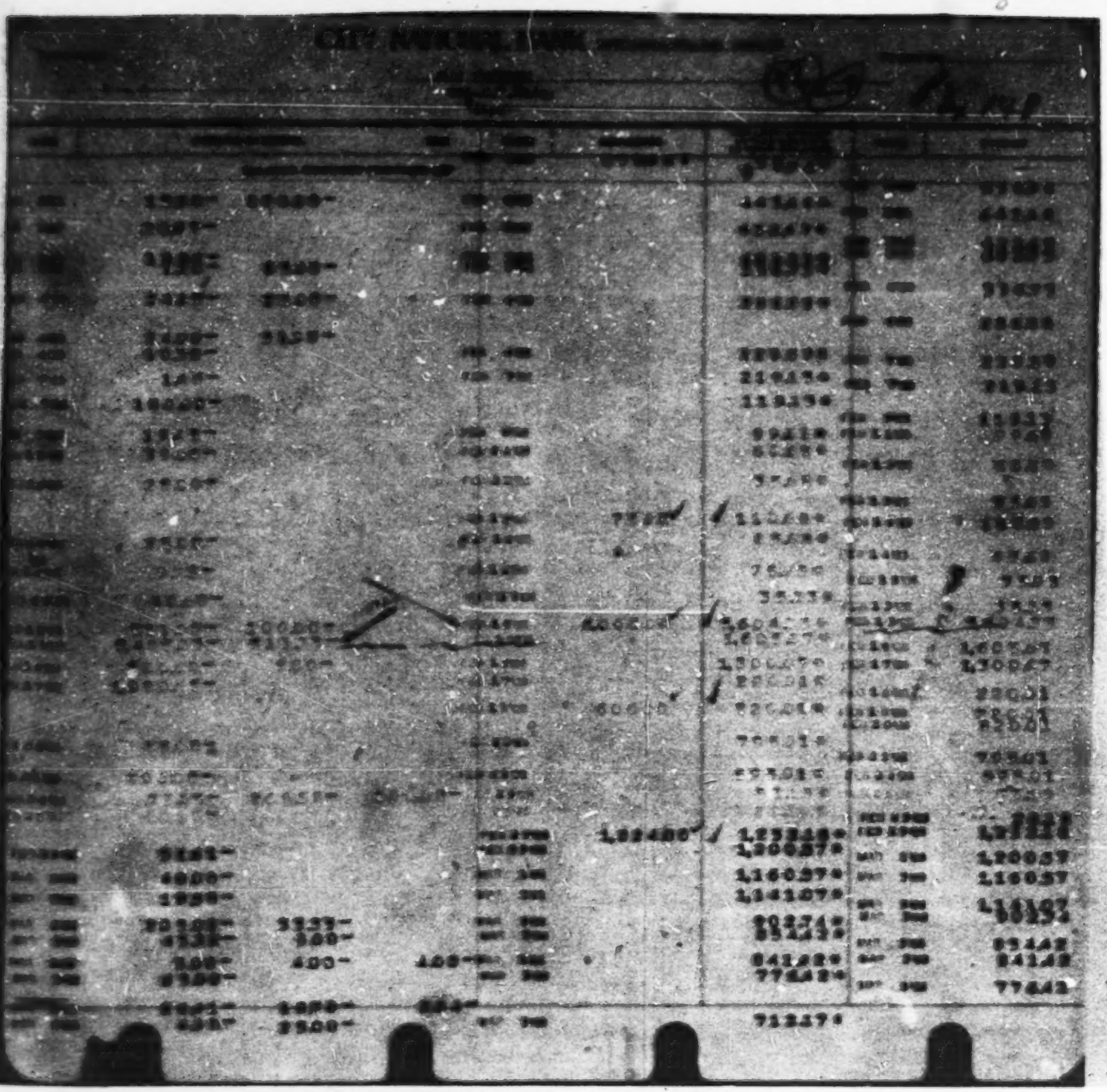
I identify that from my investigation, as a commission check on the sale of this royalty. The check was paid by the City National Bank and charged to Mr. Peckham's account. The City National Bank never appropriated

any part of that sum to itself in any way, it was deposited to the general deposit account of G. W. Peckham and checked out by him in the usual course of business. There is nothing in the records of the bank that connected that transaction with any dealings of the Wichita Royalty Company. I do not know whether Mr. Peckham accounted for the balance of that to the Wichita Royalty Company or not. Here is a deposit of $6,000.00 on February 15, 1928, in the general ledger account of Mr. Peckham, he immediately, or soon thereafter, drew that out. The ledger account was quite active.

Mr. Humphrey:

We offer in evidence the ledger account and ask that it be photostated.





1055a The Witness:

The other item for the sale of royalties is the Wilson Royalty, which sale was not evidenced by an escrow with the City National Bank. They had no escrow file on that. The bank did have an escrow file on the sale of the royalty to the Petroleum Royalties Corporation signed by Wichita Royalty Company by G. W. Peckham, and the Petroleum Royalty Company by James A. White, dated November 25, 1927. The escrow files were kept in a separate department in the bank from where the receiving and paying tellers were, that file was under the supervision of W. S. Abbott. With reference to whether or not the proceeds on the sale of that royalty went to the individual credit of G. W. Peckham, I do not have the checks to identify those deposits, I only have the dates and the amounts of the deposits, as follows:

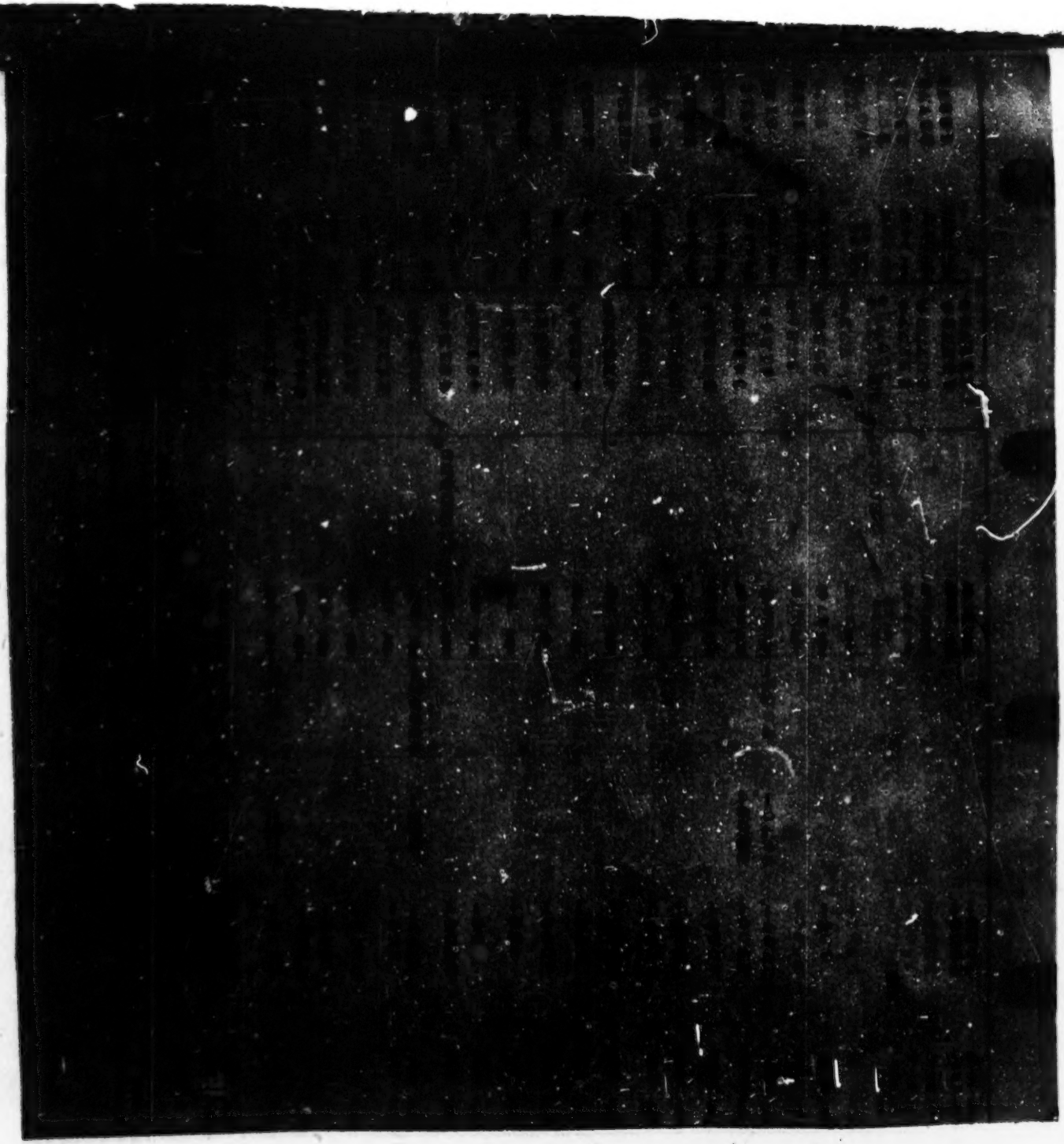
Recites on the back of this contract, received, $1,208.00 January 9, 1928, Note No. 1, Wichita Royalty Company, by G. W. Peckham. I have another item on the back of this contract, received $1,216.00, January 25, 1928, note No. 2, Wichita Royalty Company, by G. W. Peckham. Also states, received $1,224.00 February 28, 1928, Wichita Royalty Company by G. W. Peckham, Trustee. I have a deposit slip dated January 9, 1928, for $1,200.00 to the account of G. W. Peckham, and I have an idea that is the item. I am endeavoring to run that down at this time. And I have a deposit slip January 25, 1928, to G. W. Peckham, for $1,224.00. This amount on January 9, stated on the back of the contract, was $1,208.00 and there was

1055b $1,200.00 deposit January 25, says, received $1,216.00, and there was $1,224.00 deposit. Each one of these deposits are in one item. The $1,224.00 item was made of three different items. The $1,200.00 was one item on February 28, 1928, a deposit to G. W. Peckham of $1,224.00, and it stated on the back of the contract that he received $1,224.00 on the 28th of February, 1928. The date of the deposit is February 29. The original cash consideration was $2,400.00. I have a de-

posit to G. W. Peckham on December 5, 1927, for $2,400.00, November 25, 1927. It does not show when that payment was made. In other words, I do not have any evidences of those deposits in the bank to the credit of G. W. Peckham himself, unless those various deposit slips I have would correspond to it. I have Mr. Peckham's individual ledger sheet, showing the deposit made during that period of time. This is the original record which you now hand me, of the bank, showing Mr. Peckham's deposit account beginning November 25, and this sheet says November 1927 and ends January 5, 1928, continuing through February; those two sheets correctly reflect the deposits and withdrawals from Peckham's individual account during that period, and it leaves some money to Mr. Peckham's account at that time, and that sheet would reflect it, and is correct, and would also show the manner in which it was withdrawn.

Mr. Humphrey:

We offer these sheets in evidence, and ask that both sides be photostated, Plaintiff's Exhibit 149.



CITY NATIONAL BANK

1058 The Witness:

I do not know in what manner the Petroleum Royalty Syndicate made these payments, I have no records in the bank other than the escrow. I have no other evidence or records to show that these sums were deposited by Mr. Peckham in the City National Bank, except as detailed. I have no idea whether Mr. Peckham deposited this $2,400.00 check in this deposit item or not; or whether the Petroleum Royalties Corporation paid Mr. Peckham direct, I did not find where this sum was ever deposited to the credit of the Royalty Company. This item represents no transfer from the Royalty Company's account to Peckham's account. The contract I have referred to and have been testifying about. is Defendant's Exhibit 16. I do find where Mr. Peckham paid a commission on the sale of that royalty, $300.00, to W. C. Duncan. The same date that he paid the commission on the sale of the Vaughan Royalty. W. C. Duncan is a well known broker and oil operator here in Wichita Falls, and a reputable man.

Mr. Humphrey:

We offer in evidence the check to W. C. Duncan, commission on Wilson Royalty, sold to White, Harry White.

PLAINTIFF'S EXHIBIT 150.

Wichita Falls, Texas, 12-5-1927. No. ..... "1" Pay to the order of W. C. Duncan $300.00. This check is in full settlement as shown hereon. Acceptance by indorsement constitutes receipt in full. Com on Wichita Royalty sold to Harry White. (Signed) G. W. Peckham. Indorsed W. C. Duncan. Perforated paid 12-6-27.

1059 The Witness:

Harry White was an oil operator, associated with Mr. Duncan, and well known here.

I do not know any more than I have testified with reference to the sale of the Wilson Royalty and the Vaughan

Royalty, in neither of those sales did the cash go into the account of the Wichita Royalty Company. On February 15, 1928, when that $6,000.00 deposit was made, Mr. Peckham paid the bank $513.33, on his account, on the 15th he did not have sufficient funds in his own account to pay that. I have worked up, with Mr. Lambert, the schedule of the payments that Mr. Peckhm has made on his individual note.

On February 15, 1928, Mr. Peckham paid the bank $513.33. I have worked out a minimum balance schedule as of that date as to what amount of personal funds he had on deposit at the time he made this payment, if you regard this $6,000.00 check of Duncan and White as trust funds. At that time he had personal funds of $335.33, therefore, if the $6,000.00 should be considered as a trust fund of the Wichita Royalty Company, $178.00 would come out of the $500.00 check. That payment was made upon the personal check of George Peckham. He gave that check just like he gave any other, in the due course of business, to the bank.

The Wilson royalty is the $400.00 payment, none of that fund was used on payment of any debt that Peckham owed to the bank, because he made no payments between October 19, 1927, and February 15, 1928, on his liability to the bank; and after that payment to the bank
1060 on February 15, 1928, of this $513.33, he did not make another payment to the bank until July 20, 1928. Unless it could be said that this sum of $178.00 came from the trust funds, from the $500.00 check, the bank did not receive any other part of any of those two deposits.

I have made an analysis with Mr. Lambert, of the payments made during the period of time by Mr. Peckham, on his personal debt, as set forth in paragraph 15 of the cross complainant's bill of complaint, against the City National Bank, where it is alleged that G. W. Peckham paid on his personal indebtedness to the bank the sum of $57,764.21 out of his personal account with the bank; the amount of payment that Mr. Peckham made during

this period of time upon his indebtedness was $57,879.21, and there were some of those payments which he made that came from the royalty company or from the funds transferred from the Royalty Company's account, or funds deposited into these two items we have been talking about; the first one is January 17, 1927, an item of $924.71. The next item is February 15, 1928, for $178.00, both of those items aggregate $1,102.71.

During the time Mr. Peckham worked for the Wichita Royalty Company from 1923 until his death the records of the royalty company show that he drew a monthly salary. In 1923 it was $500.00 per month, and continued to be that amount, and then it was reduced to $400.00 per month, from January, 1925, until the time of his death. The records show that the Wichita Royalty Company issued Mr. Peckham a check each month for his
1061 salary. Each check shows what it is given for.

Most all of the time from November, 1923, up until the time of Mr. Peckham's death, I was employed by the City National Bank. So far as I know, no official or employee of the City National Bank ever concerned himself or made any effort to determine whether Mr. Peckham was drawing a salary, or how much, or to supervise in any way the amount of salary that Mr. Peckham should draw from the Wichita Royalty Company. I have no idea what he did with the money, some of it, the records show, was deposited in the bank.

The deposit liability of the bank to the Wichita Royalty Company, as reflected by its books, at the death of George Peckham, was $1,022.84. There was no change in that account between November 1 and November 8, of that year.

The customers of the bank, including the Wichita Royalty Company, received monthly statements from the bank at the end of each month, they were either mailed out or called for.

The first of December, 1929, the deposit balance of the Wichita Royalty Company with the bank was $731.13.

The Wichita Royalty Company kept a cash journal or ledger showing the deposit balance with the City National Bank. The records of the City National Bank show that the Wichita Royalty Company had on deposit, October 31, 1929, $1,522.84; the books of the Wichita Royalty Company of the same day show a balance of $884.15, with some checks outstanding. The books of the
1062 Wichita Royalty Company at the close of business December 31, 1929, show a balance of $950.88; and the books of the City National Bank at the close of business on the same day show a balance of $1902.30. The Wichita Royalty Company have no other deposit balances as shown by the books of the bank except the ones I have testified from.

As I have stated, each month the Wichita Royalty Company received a transcript of the status of the account of that company, together with the canceled check, showing the balance at the beginning of the month and the deposits made during the month and the checks paid during the month and the balance at the end of the month —that practice was pursued during the entire time Mr. Peckham was trustee, and continued after Mr. Scannell became trustee.

The next item alleged, brought forward in 1936, in the cross complainant's re-casted pleading against the complainant and the bank directors and Peckham transferred approxmiately thirty thousand dollars from the Wichita Royalty's account to his private account in checks issued to him in salary—I have ascertained the amount of the salary that he drew. A great number of those checks were issued by Mr. Scannell, the present trustee. I have not made an accounting as to what Mr. Peckham finally did with the salary checks during the period of time, I don't think that would be possible. It is charged that Mr. Peckham accomplished a misappropriation of money by virtue of these salary checks, through the
1063 facilities and with the active participation of the plaintiff bank, and I will state that I do not know of any participation that the bank had, in the pay-

ment of any salary checks, or any checks that were honored or presented to the bank. They were drawn on the account of the Wichita Royalty Company and signed by an authorized representative of that company and paid by the bank, and that is the extent of my knowledge. The salary drawn by Mr. Robertson was $500.00 per month, the same as Mr. Peckham started with. On December, 1930, is a check issued to E. E. Scannell, says for salary, half of December, 1930, $200.00. Mr. Scannell drew a salary after he became trustee, in the amount of $400.00 per month. While Mr. Peckham was drawing his salary as trustee, Mr. Scannell was also drawing a salary, of $200.00 per month, and at the time Mr. Peckham was drawing a salary of $500.00 per month, Mr. Scannell was drawing a salary of $300.00 per month.

I have examined the voucher record with reference to check No 1,253, which shows, "To apply on last payment of royalty, No. 71, 3/128 total production 160 acres, Grimshaw farm, Young County, Texas, $2,500.00." Also check No. 1,291, "To apply on last payment royalty No. 71, Grimshaw tract, Young County, Texas. Payment $2,500.00. Interest $16.67, total $2,516.67." Pencil notation says, "Cost $7,500.00." The next check is a voucher record on check No. 1,325 to apply on last payment of Royalty interest No. 71, Grimshaw tract, Young County, Texas, $2,500.00. Interest $33.33, total $2,533.33.

1064 Mr. Humphrey:

We offer the voucher records on those three royalties in evidence, and ask that they be photostated, marked "Plaintiff's Exhibits 151, 152, and 153."

PLAINTIFF'S EXHIBIT 151.

To apply on last payment of Royalty Interest #71 Grimshaw tract, Young County, Texas. $2500.00
Interest 33.33

$2533.33

Cost 75.00
1253—2500
1291—2500
1325—2500

May 11, 1923. 1325
George W. Peckham 2533.33

City Nat'l Bank. Paid 5-11-23. Ind. Geo. W. Peckham. E. E. S. for Tr. Dep. to cr of G. W. P.

PLAINTIFF'S EXHIBIT 152.

To apply on last payment royalty interest #71, Grimshaw tract, Young County, Texas.....$2516.67
Payment 2500.00. Interest 16.67. Cost 7500. City Nat. Bank. April 9, 1923. 1291. Paid 4-14-23. Ind. G. W. Peckham. E. E. S. for Tr Dep to Cr of G. W. P. G. W. Peckham 2516.67.

1065 PLAINTIFF'S EXHIBIT 153.

To apply on last payment or Royalty Interest #71 3/128ths total production 160 acres Grimshaw Farm, Young County, Texas $2500.00

#1253—3-10-23 2500.00
1291—4-9-23 2500.00
1325—5-11-23 2500.00

City National Bank $2500.00. Dep to cr of B. L. Fain. City Nat. Bank. Paid 3-10-23. Indorsed Cr Acct B. L. Fain. E. E. S. for Tr.

1066 The Witness:

One of these checks was deposited to the credit of B. L. Fain, I have examined the records of the bank and that is correct. Mr. Fain got credit for that check. G. W. Peckham got credit for checks 1,291 for $2,516.67. also check No. 1,325 for $2,533.33. Those two checks bear the indorsement of G. W. Peckham and are payable to his order. B. L. Fain deposit check was payable to the order of the bank.

Mr. Humphrey:

We offer these in evidence.

PLAINTIFF'S EXHIBIT 154.

Wichita Royalty Company, Wichita Falls, Texas, No. 1253. "55 March 10, 1923. $2,500.00. When properly indorsed pay to the order of City National Bank to City National Bank, Wichita Falls, Texas. Wichita Royalty Company by E. E. Scannell for trustee. (Indorsed) Cr a/c B. L. Fain. Perforated paid 3-10-23.

PLAINTIFF'S EXHIBIT 155.

Wichita Royalty Company, Wichita Falls, Texas, No. 1291. April 9, 1923. "7" $2,516.67. When properly indorsed pay to the order of G. W. Peckham to City National Bank, Wichita Falls, Texas. Wichita Royalty Company, by E. E. Scannell, for trustee. (Indorsed) G. W. Peckham. (Perforated) Paid 4-10-23.

PLAINTIFF'S EXHIBIT 156.

Wichita Royalty Company, Wichita Falls, Texas, No. 1325. May 11, 1923. "7" $2,533.33. When properly indorsed pay to the order of George W. Peckham to City National Bank, Wichita Falls, Texas. Wichita Royalty Company, by E. E. Scannell, for trustee. Indorsed George W. Peckham. Perforated paid 5-11-23.

1067

The Witness:

I found among the papers of the royalty company an escrow contract to purchase this property. I also found among Mr. Peckham's other checks, a check dated 5-7-23, payable to B. L. Fain for $2,516.66. That is the indorsement of B. L. Fain, it appears that two of those payments were delivered to B. L. Fain. This is the contract I found in the escrow file of the City National Bank. It shows the purchase of that Grimshaw Royalty by Wichita Royalty Company by G. W. Peckham. $7,500.00 payable as follows: $2,500.00 cash, receipt of which is hereby acknowledged, $2,500.00 due thirty days from date hereof, and $2,500.00 due sixty days from date hereof. The deferred payments to bear interest at the rate of eight percent per annum until paid. It is further understood and agreed that oil runs on the above described interests collected by the party of the first part from this date, shall be employed as a credit to the party of the second part on final payments recited above.

These payments show a consummation of that contract and the disposition of the funds. The deed has been offered in evidence.

Mr. Humphrey:

We offer the contract in evidence.

(This instrument is the same as instrument marked Defendant's Exhibit 123" and is therefore not copied at this time.)

1068 The Witness:

Check dated 5-15-23, and 5-22-23, to Wichita Royalty Company in the sum of $234.00, and $302.98, the records show that the Wichita Royalty Company received those checks, they were for oil runs on Grimshaw for April, oil runs on Grimshw March 1 to 31, 1923. They are George Peckham's checks. Signed by G. W. Peckham, payable to Wichita Royalty Company, indorsed for deposit to Wichita Royalty Company. These checks were paid out of G. W. Peckham's personal account.

Mr. Humphrey:

I offer these checks in evidence, Plaintiff's Exhibits 157 and 158.

PLAINTIFF'S EXHIBIT 157.

Wichita Falls, Texas, May 22, 1923. No. . . . . "8" City National Bank of Commerce, pay to Wichita Royalty Company or bearer $302.98. Oil runs on Grimshaw for April run by Humble. (Signed) G. W. Peckham. (Stamped on back) For deposit only, G. W. Peckham, as trustee Wichita Royalty Co., 509 Security Nat'l Bank Bldg., Wichita Falls, Texas. 9007. Perforated paid 5-26-27.

PLAINTIFF'S EXHIBIT 158.

Wichita Falls, Texas, 5-15-1923. No. . . . . "8" City National Bank of Commerce. Pay to Wichita Royalty Co., or Bearer, $234.05. Oil runs on Grimshaw March 12 to 31, 1923. (Signed) G. W. Peckham. (Stamped on back) For deposit only, G. W. Peckham, as Trustee Wichita Royalty Co., 509 Security National Bank Bldg., Wichita Falls, Texas. 9114. Perforated paid 5-16-23.

1069 Mr. Rogers:

I wish the record to show that the Royalty Company has offered Defendant's Exhibit 123, and it is

offered for no other purpose other than to show it was a transaction between the individual and the trustee acting in a dual capacity, and its binding effect is not admitted, but is denied. And its offer for any other purpose is withdrawn, it is only offered for the purpose of showing the personal interest of the trustee dealing with himself in a transaction that has been repudiated by the pleadings and is still repudiated by the facts.

The Witness:

Exhibit 158 shows oil runs from March 12 to 31, 1923; exhibit 157 shows oil runs for the month of April by the Humble. The books of the Wichita Royalty Company show that it has received currently the oil runs from that property ever since it was acquired. I have not checked the amount, in round figures I would say eighty-five or eighty-six hundred dollars. The production from that property is in excess of the purchase price, and they are still receiving a little oil from it.

Check No. 169, payable to G. W. Peckham, signed by E. E. Scannell for $1,200.00, dated February 29, 1924, shows to purchase of 1924, Special Six Studebaker, $1,200.00. G. W. Peckham got credit for that check in his personal account, in the City National Bank, charged against the deposit account of Wichita Royalty Company. The records show Mr. Peckham paid $1,702.95 for that car, August 25, 1923. This check is dated February 29,
1924. The records of the Wichita Royalty Com-
1070 pany show they kept the car two years and seven months and sold it for $550.00.

Check 154 is a check payable to B. L. Fain, signed by E. E. Scannell for the Wichita Royalty Company; check 185 is a check of $9,250.00, signed by E. E. Scannell for the Wichita Royalty Company, payable to G. W. Peckham. The voucher record on check 154 shows purchase of royalty interest in Tonkowa in Creek County, Oklahoma, $12,000.00, Lumzy Deer Farm, Carmichael farm, Ceverlin, McDaniel farm, and Goldry farm. In pencil it says, "See letter to G. W. Peckham, Wichita Royalty Company,

dated March 17, 1924. This money to apply on Wilson Royalty instead of above." I do not find that.

The next voucher, No. 185, shows to cover the difference in purchase price of Tonkawa-Deer royalty, see check No. 154, purchase price of $27,500.00, for one-eighth royalty on Luke Wilson eighty acres, block 27, Ray, Massie, Featherstone and Staniforth leases. Total cash payable $21,250.00, to be paid from oil, $6,250.00, the amount of the check is $9,250.00. The total of the two checks aggregate $21,250.00. From my investigation I know that Mr. Peckham made a deed to 1/8th of this royalty to the Wichita Royalty Company. He got credit on February 2, 1924, for $12,000.00 and on March 18, 1924, he got credit for $9,250.00. Mr. Peckham bought this royalty originally from F. L. Wilson, he got the full one-eighth royalty under these two tracts of land, I don't remember
1071 the block number, they are lots 13 and 14, block 27, of the American Tribune new colony subdivision, Archer County, Texas.

Mr. Humphrey:

We offer the deposit slips in evidence, Plaintiff's Exhibits 159 and 160.

PLAINTIFF'S EXHIBIT 159.

City National Bank. Deposited by G. W. Peckham, Wichita Falls, Texas, 2-2-1924. Check as follows: $12,000.00. "8" Total.

PLAINTIFF'S EXHIBIT 160.

City National Bank. Deposited by G. W. Peckham, Wichita Falls, Texas, 3-18-1924. Checks as follows:

	9,250.00
"7"	35.00
7748	7.36
Total	$9,292.36

The Witness:

The records I have investigated show the history of that purchase; Mr. Peckham sold to J. H. Massie, undivided 1/16th interest in this block of land, for a consideration of $75,000.00 cash and $25,000.00 out of the payment of oil. The next, G. W. Peckham sold the United Royalty Company 3/32nds of 1/8th for a consideration of 27,000.00, which was more than the consideration he got from the Wichita Royalty Company. The sale price on that very unit was $9,000.00 to the United Royalties.

When I say unit, I mean 1/32nd of 1/8th, the
1072 consideration. The unit price to the Wichita Royalty Company was $6,875.00 for 1/32nd of 1/8th and to the United Royalty Company it was $9,000.00. He sold the King Royalty 1/32nd of 1/8th for $8,500.00. He also sold R. A. King 2/32nd of 1/8th for $20,000.00, which was a unit price of $10,000.00 for 1/32nd of 1/8th. The Wichita Royalty Company's total sale price was $27,500.00, for the oil assumption. That is all I have that he sold to. He did sell 1/128th interest to the Tolowa Royalties, Incorporated, the revenue stamps indicate a consideration of $12,500.00. He sold the Wichita Royalty Company 1/64th for $27,500.00, and the consideration of the Tolowa was 1/128ths for $12,500.00, according to the revenue stamps. $12,500.00 represents the cash payment, and not the assumption, the assumption was 1/16th of the $50,000.00 indebtedness against it. They sold another one, 1/128th interest, cash paid $12,500.00, revenue stamps $12.50. There were three sales, 1/128th interest and the revenue stamps on that was $12.50. The activity in dealing with these royalties along about that time, all of these, were made about the same time, these sales. One of them on the 10th of May, 1924, one on May 24, 1924, and one on April 22, 1924, and the sale to the Wichita Royalty Company was March 17, 1924. The United Royalty Company, April 8, 1924, King Royalty Company, March 1, 1924, R. A. King, March 1, 1924, and to Mr. Massie, March 15, 1924. Mr. Peckham acquired it around the first of March, 1924, it was filed

March 8, 1924. About that time the Ray,
1073 Featherstone and Massie pool came in out there. The date of the instrument from Wilson to George Peckham is March 8, 1924. Peckham paid for that royalty $100,000.00 cash and $50,000.00 in oil. George Peckham gave his check on March 7, 1924, to L. F. Wilson for $20,000.00 and on March 18, 1924, for $80,000.00 showing that he paid $100,000.00 in cash, out of his personal account. This was the royalty that he sold to the Petroleum Royalties Corporation, $6,000.00 in 1927, I have not checked to see what that produced. The records of the Wichita Royalty Company show that it was a producing royalty and produced considerable. Defendant's Exhibit 40, shows production from this royalty, $25,475.04. We are talking about property No. 75.

Property No. 76, paragraph 57 of the bill of complaint, alleges a misappropriation of $21,000.00 evidenced by two checks, one of $10,000.00 and one of $11,000.00. Check No. 237 is dated July 2, 1924, payable to the order of the Security National Bank for $11,000.00, signed by E. E. Scannell for the Wichita Royalty Company, the voucher record shows, "To purchase of interest in lots 9 and 10, block 41, J. H. White lands, Archer County, Texas, $11,000.00, total cost $21,000.00. The voucher record with reference to check No. 246, $10,000.00, "to purchase of interest in lots 9 and 10, block 41, J. H. White lands, Archer County, Texas, $10,000.00. These two checks are both payable to the Security National Bank, which was operating in Wichita Falls, Texas. Mr. Peckham carried
an account there personally. The books and rec-
1074 ords show that the Wichita Royalty Company carried an account at the Security National Bank at that time. Those two checks were cleared by the Security National Bank and paid by the City National Bank, by an indorsement across the back, Security National Bank, Wichita Falls, Texas. Clearing House, paid Wichita Falls, Texas, July 26, 1924. The other one is Security National Bank, Wichita Falls, Texas, clearing house—it says July, 1924, Wichita Falls, Texas, handled

by Teller No. 4 of the Security National Bank, it has the teller stamp on it of the Security National. It is not indorsed by anybody except the Security National Bank. I have not been able to check those two items and see where the funds went from the Security National Bank and how they went out of that bank and into whose credit, because those records have been destroyed. I have talked to the party who purchased the assets of the Security National Bank and cannot find the record. That bank went into liquidation several years ago, and a receiver appointed, Mr. Sage, who told me the records had been destroyed.

Mr. Humphrey:

We offer the two checks in evidence, Plaintiff's Exhibits 161 and 162.

PLAINTIFF'S EXHIBIT 161.

Wichita Royalty Company, Wichita Falls, Texas, No. 246. July 24, 1924, $10,000.00. When properly indorsed pay to the order of Security National Bank to City National Bank, Wichita Falls, Texas. Wichita Royalty Company, by E. E. Scannell for trustee. "4."

1075

PLAINTIFF'S EXHIBIT 162.

Wichita Royalty Company, Wichita Falls, Texas, No. 237, July 2, 1924. $11,000.00. When properly indorsed pay to the order of Security National Bank to the City National Bank, Wichita Falls, Texas, Wichita Royalty Company, by E. E. Scannell, for trustee. "4"

The Witness:

I do find evidence of ownership through the books and records of the Wichita Royalty Company of that prop-

erty; the ledger of the Wichita Royalty Company says Producing royalties owned on January 27, 1925, shows a credit of $1,796.86, the cash receipt original record of cash received $114.00, dated January 27, 1925, shows part payment on sale of property No. 76, $1,796.86, says received as part payment sale of property No. 76, lots 9 and 10, block 41, J. H. White land, Archer County, Texas. That is the corresponding property that the original voucher memorandum kept by the Wichita Royalty Company shows that the checks were given for, those two lots in the White lands. The ledger on February 17, shows a credit of $538.04, to producing royalties owned, and the original record of cash received, No. 118, on the same day, shows receipt of $538.04, property No. 76, final payment on sale of our interest in lots 9 and 10, block 41, J. H. White land, Archer County, Texas. There is no record showing from whom that money was received; the deposit slip of the Wichita Royalty Company on January 27, shows they came from B. L. Fain.

1076 Mr. Humphrey:

We offer the deposit slips corresponding to the cash receipts, Plaintiff's Exhibit 163 and 164.

PLAINTIFF'S EXHIBIT 163.

City National Bank, deposited by Wichita Royalty, Wichita Falls, Texas, 4-17-25. Checks as follows:

Oil runs	301.02
R. L. M(McM)	26.42
B. L. Fain	538.04
"8" Total	$865.48

PLAINTIFF'S EXHIBIT 164.

City National Bank, deposited by Wichita Royalties, Wichita Falls, Texas, 1-27-1925. Checks as follows:

Oil runs	1371.63
B. L. Fain	1796.86
"8" Total	3168.49

The Witness:

You now hand me a transfer to J. H. White on the 31st of January, 1925, of this property; a certified copy of a transfer from C. W. Murchison to E. R. Fain by E. R. Fain, Attorney-in-fact, Ross Robertson, B. L. Fain, J. I. Staley, conveying to J. H. White, this lease with the oil producing wells on it, dated December 15, 1924, filed December 18, 1924, that assignment covers the same property. Filed for record the 19th of December, 1924, and B. L. Fain, according to the deposit slip, deposited the amount of the proceeds that is reflected by the Wichita Royalty Company books on this property.

1077

Mr. Humphrey:

We offer in evidence this assignment from Murchison and Fain, et al, to J. H. White.

PLAINTIFF'S EXHIBIT 165.

C. W. Murchison, et al, to J. H. White. No. 7753. Assignment (C. W. Murchison, E. R. Fain, B. L. Fain, Ross Robertson, J. I. Staley, and A. W. Ross, attorney in fact for Thomas A. Ross, to J. H. White.)

Consideration $15,000.00 cash.

Conveying 7/8ths of the oil and gas saved and produced and covering the following described tract of land situated in the county of Archer, State of Texas, to-wit:

Lots Nos. 9 and 10, Block No. 41 of the American Tribune New Colony Company subdivision of land, as per map or plat thereof duly recorded in the Clerk's office or Archer County, Texas, to which record reference is hereby made for more accurate description of said lots.

Together with two producing oil wells on said lease, and the following described personal property.

1. Standard rig as the same now is on the lease, dismantled.

1 25 H. P. engine now on well No. 2 with circulating tank.

1 Belt and engine house.

Rod lines and jacks.

1078 2 Wells tubed and cased

4 250 barrel steel tanks

2 500 barrel steel tanks

1 50 barrel gun barrel

Together with such equipment and tools as are now on said lease that belong to same.

Dated December 15, 1924.

Duly acknowledged.

Filed for record December 18, 1924, at 10:00 A. M.

Recorded December 19, 1924, at 11:55 A. M.

Mr. Humphrey:

We offer in evidence the original record of cash received, 114, of the Wichita Royalty Company, dated January 27, 1925, showing the receipt of the sum of $1,796.86, received in part payment of the sale of property No. 76, lots 9 and 10, block 41, J. H. White land, Archer County, Texas.

(Marked "Plaintiff's Exhibit 166.")

PLAINTIFF'S EXHIBIT 166.

Original record of cash received. No. 114. From Pipe Line Cos. Jan. 27, 1925. Account:

Description of Cash Items.

Royalty Income	1371.63
Part payment on sale Prop. No. 76	1796.86
Received in payment of oil runs	1371.63
Received as part payment of Prop. No. 76	1796.86

Lots 9 & 10, blk 41, J. H. White Land, Archer County, Texas. The above listed cash item received by me and passed to R for deposit.

1079 Mr. Humphrey:

Also offer in evidence the original record of cash received, No. 118, showing property No. 76, final payment on sale of our interest, in lots 9 and 10, block 41, J. H. White land, Archer County, Texas, $538.04.

(Marked "Plaintiff's Exhibit 167").

PLAINTIFF'S EXHIBIT 167.

Original Record of Cash Received No. 118

From: ..... Feb. 17, 1925.

Account: .....

Description of Cash Items.

Received in Payment of Oil runs	$301.02
Notes Rec. (R. L. Mathis)	25.00
Interest	1.42
Property No. 76 (Final payment on sale of our interest in lots 9 & 10, B. 41, J. H. White land, Archer County, Texas.	538.04

The above listed cash items received by me and passed to r for Deposit.

1080 Mr. Humphrey:

In connection with the deposit slip and the other deed, and the cash receipts, I also offer in evidence carbon copy in the bound volume of the vouchers, check No. 237 of $11,000.00.

(Marked "Plaintiff's Exhibit 168" as follows:)

PLAINTIFF'S EXHIBIT 168.

To purchase of interest in Lots 9 and 10 block 41 J. H. White lands, Archer County, Texas $11,000.00 Total Cost $21,000.00 July 2, 1924 237 Security National Bank $11,000.00 City Nat. Paid 7-3-24. Ind. Sec. Nat. Bank Dep. to cr of G. W. Peckham.

1081 Mr. Humphrey:

Also offer in evidence the voucher memorandum in the same volume, for check 246, for $10,000.00, both of which show was for the purchase of the interest in lots Nos. 9 and 10, block 41, J. H. White land, Archer County, Texas.

(Marked "Plaintiff's Exhibit 169").

PLAINTIFF'S EXHIBIT 169.

To purchase of interest in Lots 9 and 10 Block 41 J. H. White Land, Archer County, Texas, $10,000.00 246 July 24, 1924, Security National Bank, $10,000.00. City—No indorsement except Sec. Nat'l Clearing House Stamp 7-26-24, Paid 7-24-26.

1082 The Witness:

I do know that it was a custom during that period of time, among oil operators, and people dealing in oil leases where there was more than one interested, for sometimes, one party to hold the property in his name for the benefit of the other parties.

Mr. Rogers:

To all of the evidence, other than the books and records of the royalty company connected with this transaction, objection is made and motion is made to strike the same from the record, because it is apparent that the trustee, G. W. Peckham, caused trust checks to issue in the aggregate sum of $21,000.00, which he personally received and made no accounting therefor, other than causing the books and records to show the trust ownership to the property which he did not have any title to, or memorandum in writing, from whence title could be made, or from which a trust might be impressed upon real estate, causing the trust books to show receipt of oil runs aggregating $2,925.90, as the sale price of the aggregate total of $2,334.90, as the sale price of the aggregate total of $2,334.90; the trust sustaining a substantial loss in the transaction, to the personal benefit of the trustee, even though explained in the manner sought to be explained. There is no record whereby the trust receives anything other than the credits shown as the receipts of oil produced and the sale price thereof, as the trustee caused the trust books to show, as a credit upon the original $21,000.00, which the
1083 trust had theretofore paid the trustee personally. And for such reason, objection is made to such testimony.

(Which objection was by the Court overruled, to which the Defendant, Wichita Royalty Company then and there excepted.)

The Witness:

The next property is 79, the Routan property, check 373 for $2,500.00, payable to G. W. Peckham, indorsed by G.

W. Peckham, signed by E. E. Scannell on Wichita Royalty Company. The voucher shows to purchase of one-sixteenth of the royalty in the Routan land, one hundred and seventeen acres in Archer County, Texas, $2,500.00.

Mr. Humphrey:
We offer the check and the voucher in evidence.

PLAINTIFF'S EXHIBIT 170.

Wichita Royalty Company, Wichita Falls, Texas, No. 373 (in red pencil) Dep. to cr. of GWP 5-5-25 "10" $2,500.00 When properly indorsed pay to the order of G. W. Peckham To the City National Bank, Wichita Falls, Texas, Wichita Royalty Company, by E. E. Scannell for trustee (Indorsed G. W. Peckham) (Perforated) Paid 5-5-25.

Mr. Humphrey:
I ask that the voucher be photostated.

(Marked "Plaintiff's Exhibit 171" as follows:)

1084 PLAINTIFF'S EXHIBIT 171.

Property No. 79 To purchase of 1/16 of the royalty in the Routan Land 117 acres in Archer County, Texas $2,500.00 May 5, 1925, 373 G. W. Peckham 2500.00 (Ind. G. W. Peckham Paid May 5, 1925, Dep. to Cr. of G W P, City.

1085 The Witness:
The deed which you now hand me covers one hundred and seventeen acres of land out of the Isaac Holman League and Labor of land patented to the heirs of Isaac Holman. That is the same tract, and it is dated June 30, 1925. This check was paid 5-5-25. There was not any escrow.

Mr. Humphrey:
We offer the deed in evidence, Plaintiff's Exhibit 172.

PLAINTIFF'S EXHIBIT 172.

Mineral Deed from Geo. B. Ray and J. H. Massie, to Wichita Royalty Company.

Consideration $10.00 cash in hand paid.

Conveying an undivided 1/16th interest in all of the oil and gas and other minerals in and under and that may be produced from the following described land situated in Archer County, Texas, to-wit:

117 acres of land out of the Isaac Holman league and labor of land patented to the heirs of Isaac Holman by virtue of certificate No. 672, being known and described as Block No. 9, of the Crawford Pasture subdivision of said Holman Survey, and described more particularly as follows: Beginning at a point 2805 varas East and 2481 varas South of the N. W. corner of the said Isaac Holman Survey for the N. E. corner of this tract, being also the S. E. Corner of a tract 143-3/4 acres formerly in the name of E. D. Evans; Thence South 945 varas for the S. E. corner; Thence West 700 varas for the S. W. corner; Thence North 945 varas for the N. E. Corner; Thence East 700 varas to the place of Beginning, containing 117 acres of land, more or less;

1086

Together with the right of ingress and egress at all times for the purpose of mining, drilling and exploring said land for oil, gas and other minerals, and removing the same therefrom.

Dated June 30, 1925.

50c documentary stamps.

Duly acknowledged, on the 30th day of June, 1925.

The Witness:

That $2,500.00 was deposited to the credit of George Peckham on May 5, 1925, individually, and the check was debited against the deposit account of the Wichita Royalty Company. On the same day George Peckham received credit for $2,500.00, he gave his check for $2,500.00 payable to Ray and Massie signed G. W. Peckham and charged to the individual account of G. W. Peckham in the City National Bank. His check is deposited to the credit of Ray and Massie, and is the check I have shown dated 5-5-25. The check bears G. W. Peckham's genuine signature. It was deposited in the Security National Bank, where Ray and Massie carried their account.

Mr. Humphrey:

We offer the check in evidence.

PLAINTIFF'S EXHIBIT 173.

City National Bank Check No. . . . . Wichita Falls, Texas 5-5-25 $2500.00 Pay to the order of Ray & Massie 1/12 int in deal with Allen Mooers Routan Land. Indorsed Dept. to credit of Ray & Massie (Perforated) Paid 5-6-25.

1087 The Witness:

The next one is for $11,000.00, checks Nos. 385 and 387, for $6,000.00 and $5,000.00, property No. 80.

Mr. Rogers:

Having now inspected Plaintiff's Exhibit 173, to which I started to object a minute ago, and having now read the notation thereon, which is as follows, "One-half interest in deal with Allen Mooers-Routan land," it is apparent that the item is not in payment of the interest conveyed by George B. Ray and J. H. Massie, under Plaintiff's Exhibit 172, which was one-sixteenth, unless it be that G. W. Peckham, as an individual, had traded with Ray and Massie for a half interest in this land, and caused

one-sixteenth interest to be conveyed to his trust and retain himself the difference, receiving full consideration personally from the trust which he directed, depositing the total amount thereof to his personal account, and paying therefrom to George C. Ray and Massie, the amount so received from the trust in full payment of his personal interest in that, of the royalty, the transaction can mean no more than that, and if it does not mean that, the transaction is not identified by the check, nor is the check shown to be in payment of any interest described in Plaintiff's Exhibit 172. We object to it for those reasons, both the checks and the deed, being Plaintiff's Exhibits 172 and 173, and move that they be stricken.

The Witness:

As to check No. 385 of $6,000.00, the voucher record shows original typing for 1/16th of royalty on
1088 block 21, East twenty-five acres, north sixty acres, west one hundred acres, block 19, east sixty acres, west one hundred and sixty acres block 19. South sixty acres, west eighty acres, block 22, J. L. Anderson South Pasture Subdivision, Archer County, Texas. One-eighth of royalty on southwest quarter of northwest quarter of section 2, J. Pointevant Survey, Young County, Texas, 215 acres in J. L. Anderson subdivision known as Norday district, 20 acres, and the Pointevant Survey Young County, $6,000.00.

The voucher on 387 for $5,000.00 dated June 29, 1925 shows 1/16 of royalty on all of block 21, and the east twenty-five acres, north sixty acres, west one hundred acres, block 19; east sixty acres west one hundred and sixty acres block 19; and south sixty acres, west eighty acres of block 22, J. L. Anderson south pasture subdivision Archer County, Texas; one-eighth of royalty on west half of southwest quarter of the northwest quarter of section No. 2, J. Pointevant Survey, Young County, Texas, the property is carried on the books of the royalty company as No. 80.

These deeds you exhibit to me, one of them covers forty acres in the south pasture—both of them in the south pasture.

Mr. Humphrey:

We offer the deeds in evidence, Plaintiff's Exhibits 174 and 175.

PLAINTIFF'S EXHIBIT 174.

Mineral deed. George W. Peckham to Wichita Royalty Company.

Consideration $10.00 cash.

1089 Conveying an undivided 1/16th interest in and to all the oil, gas and other minerals in and under and that may be produced from the following described land situated in Archer County, Texas, to-wit:

The South thirty-two (32) acres of block 21 of the south Anderson Ranch lands as shown by map or plat of record in the office of the County Clerk of said County. The south sixty acres of the west eighty acres of block No. 22, Anderson South pasture subdivision. The north twenty five acres of the east fifty acres of the west one hundred acres, block 19, Anderson south pasture. The East sixty acres of the West one hundred sixty acres of Block No. 19, Anderson South Pasture Subdivision.

$8.00 documentary stamps.

Together with the right of ingress and egress at all times for the purpose of mining, drilling and exploring said land for oil, gas and other minerals, and removing the same therefrom.

Said land being now under an oil and gas lease executed in favor of Empire 32 acres, Cullum 60 acres, Prairie Oil & Gas Co. 40 acres, Weldon 25 acres, Constantin 20 ac. it is understood and agreed that this sale is made subject to the terms of said lease, but covers and includes 1/16 of all of the oil royalty, and gas rental of royalty due and to be paid under the terms of said lease.

Dated July 1, 1925.

1090 Duly acknowledged.

Filed for record September 28, 1925. Recorded October 9, 1925, at 11:00 o'clock A. M. in the records of the said county, Volume 106, page 499.

PLAINTIFF'S EXHIBIT 175.

Mineral deed. G. W. Peckham to Wichita Royalty Company.

Consideration $10.00.

Conveying an undivided 1/16 interest in and to all of the oil and gas and other minerals in and under, and that may be produced from the following described land situated in Archer County, Texas, to-wit:

The North 40 acres of Block No. 21, of Anderson Subdivision of his south pasture as per plat of record in the records of Archer County, Texas.

$2.00 Documentary stamp, canceled.

Together with the right of ingress and egress at all times for the purpose of mining, drilling and exploring said land for oil, gas and other minerals, and removing the same therefrom.

Said land being now under an oil and gas lease executed in favor of The Norday Oil Company, it is understood and agreed that this sale is made subject to the terms of said lease, but covers and includes 1/16 of all of the oil royalty, and gas rental of royalty due and to be paid under the terms of said lease.

Dated July 20, 1925.

Duly acknowledged.

1091 Filed for record September 23, 1925, at 8:00 o'clock A. M. recorded October 2, 1925, at 11:00 A. M. in the records of said county, volume 105 page 495.

The Witness:

$10.00 revenue stamps were placed on those deeds, which would indicate a consideration of $10,000.00. That does not include the Pointevant survey in Young County. Both of those checks were indorsed by G. W. Peckham, they were handled by teller No. 7 on the $5,000.00 one and teller No. 8 on the $6,000.00 one.

Mr. Humphrey:

We offer the deposit slips in evidence.

PLAINTIFF'S EXHIBIT 176.

City National Bank Deposited by G. W. Peckham Wichita Falls, Texas, 6-24-1925 Checks as follows: "8" Total 6,000.00.

PLAINTIFF'S EXHIBIT 177.

City National Bank Deposited by G. W. Peckham Wichita Falls, Texas, 6-29-1925 Checks as follows:

R	5,000.00
"7"	500.00
Total	$5,500.00

The Witness:

As to the accounting made of those two checks by George Peckham: On June 25, 1925, G. W. Peckham issued his check drawn on the Scurity National
1092 Bank, Wichita Falls, payable to Murchison and Fain Oil Company for $9,493.75, it says, on the notation in the corner, "For 1/16th royalty interest in 217 acres in blocks 19-21-22, South Anderson Ranch." That check indorsed "Deposit only, Murchison and Fain Oil Company by B. C. Ackerman."

Mr. Humphrey:

In connection with that check, I offer in evidence also the voucher memorandum and the check of the Wichita Royalty Company, No. 385.

PLAINTIFF'S EXHIBIT 178.

Wichita Falls, Texas June 25, 1925 No. .... "6" The Security National Bank of Wichita Falls Pay to the order of Murchison & Fain Oil Company $9,493.75 For 1/16 roy. int in 217 ac. (Signed) G. W. Peckham in blocks 19-21-22 South Anderson Ranch. (Indorsed) Deposit only Murchison & Fain Oil Company by B. C. Ackerman (Perforated) Paid 6).

Mr. Humphrey:

We also offer in evidence Plaintiff's Exhibit No. 179.

(Marked "Plaintiff's Exhibit 179" as follows:)

1093 PLAINTIFF'S EXHIBIT 179.

1/16 of Royalty on all Block 21 East 25 acres North 50 acres of West 100 acres Block 19; East 60 acres West 160 acres Block 19 South 60 acres of West 80 acres Block 22 J. L. Anderson South Pasture Sub-Division Racher Coun-

ty, Texas. 1/8 of royalty on west half of southwest Quarter of the Northwest quarter of Section No. 2 J. Pointevent Survey Young County, Texas. 6000.00, 217 Acres in the J. L. Anderson Sub-Div. known as Norday District 20 acres in the Pointevent Survey, Young County, Texas. See 387 $5000, 385, June 24, 1925, G. W. Peckham, 6000.00 City Nat'l, G. W. Peckham Paid 6-25-25, Dep. to cr of G W P.

1094 Mr. Humphrey:

Also Plaintiff's Exhibit 180, as follows:

(Marked "Plaintiff's Exhibit 180" as follows:)

PLAINTIFF'S EXHIBIT 180.

1/16 of royalty on all of Block 21; and the East 25 acres North 50 acres of West 100 acres Block 19; East 60 acres West 60 acres Block 19; and the South 60 acres of west 80 acres Block 22 J. L. Anderson Pasture Sub-Division Archer County, Texas. 1/8 of royalty on West half of Southwest Quarter of the Northwest Quarter of Section No. 2 J. Poitevent Survey Young County, Texas See No. 385 $6,000.00, $5,000.00, June 29, 1925, 387, G. W. Peckham $5,000.00 City End. G. W. Peckham Paid 6-29-25, Dep to Cr of G W P.

1095 The Witness:

Other instruments showing further payments on this account, escrow agreement signed by G. W. Peckham and G. W. Vernon and wife, cover the royalty deed to twenty acres of land out of the J. Pointevant survey No. 2, is that the properties described in the vouchers accompanying these checks of $11,000.00. I got this escrow agreement from Olney, First National Bank. This escrow was the City National Bank of Olney and the First National Bank of Olney, and the City National Bank of Olney consolidated and that was in their files. It

shows that G. W. Peckham gave his check to the City National Bank of Olney for $1,997.00 and his deposit slip to the escrow fund of $1,000.00 by G. W. Peckham and G. W. Vernon contract. Consideration is $3,000.00 instead of $1,000.00 in the escrow agreement.

Mr. Humphrey:

We now offer in evidence the deposit slip, escrow contract between G. W. Vernon and Della Vernon and G. W. Peckham showing the mineral deed received by G. W. Peckham and the receipt of the escrow moneys.

PLAINTIFF'S EXHIBIT 181.

The City National Bank of Olney Deposit ticket, Olney, Texas. 6-23-1925 Credit Escrow fund Checks as follows: W. Falls 1000.00, G. W. Peckham and G. W. Vernon, contract, WDCO. (Closed.)

1096 PLAINTIFF'S EXHIBIT 182.

The State of Texas,
County of Young.

G. W. Vernon and wife Della Vernon hereinafter called the grantors have this day executed in favor of G. W. Peckham hereinafter called the grantee, a royalty deed covering 20 acres of land out of J. Pointevent Survey No. 2 in Young County, Texas, for which deed the grantee is to pay cash consideration of $3,000.00, of which amount the sum of $1,000.00 together with the deed and a copy of this escrow agreement are to be deposited in the City National Bank of Olney, Texas.

It is agreed that the grantor shall furnish for examination only within three days from date hereof a complete abstract of title certified down to date showing good and merchantable title to said land; that said grantee is then

allowed a period of three days in which to have same examined and either accept the title or point out to the grantor in writing any objections that may have been found. If objections are found to said title the grantor is to make effort to cure or correct same and a period of ten days is allowed for making such corrections. In case the objections are of such a nature that it is impossible to correct same in the time allowed then said escrow bank shall deliver the deed to the grantor and the money deposited to the grantee, provided that the grantee shall have the option to waive the objections and accept the title. If or when title is found good and merchantable the grantee will at once deposit in said bank the remainder of the cash payment, then the deed shall be delivered by said bank to the grantee and the money deposited to the grantor.

1097 In case the grantee shall fail or refuse to comply with this agreement as to having title examined or as to making the cash payment, then said escrow bank is instructed and requested to deliver the lease to the grantor and the money deposited with this agreement shall be taken and accepted by the grantor as a forfeit and as liquidated damages.

Signed in triplicate originals this the 22nd day of June, A. D. 1925.

(Signed) G. W. VERNON,
DELLA VERNON,
J. W. RECKLMAN,
By ?
Agent.

M/D received G. W. Peckham.

Release escrow money (Stamped Jun. 29, 1925. (On top in pencil) Get Peckham's ck of 6/29/25, 1997.00.

Mr. Rogers:

We object to the contract and the deposit slip, because the Wichita Royalty Company is not a party to it, nor did the Wichita Royalty Company thereby, or in any other manner, receive any title to the interests therein described. No deed of conveyance or any memorandum in writing signed by G. W. Peckham being offered in evidence, or shown to exist, whereby that the trust obtained any title thereto, even though such title would have, if so acquired, been voidable, and the trust having
1098 elected to rescind and repudiate such voidable transaction, had there been one; there is no evidence to show that the trust is a party to this instrument, other than the books and records which the trustee caused to be kept under his supervision, but carefully avoided the signing of any instrument in writing whereby his estate could be bound thereby. And further, because though the notation is made that escrow money was received, yet no deed thereunder, even to Peckham is shown to exist, nor that he obtained title thereunder. Nor any other matters, other than what might be the facts that the trade was voluntarily rescinded and canceled between the parties, and it is thus not shown that G. W. Peckham himself received any title under this instrument or otherwise, in and to the twenty acres which he caused the trust books to reflect that he was selling to it.

(Which objection was by the Court overruled, to which the Defendant, Wichita Royalty Company, then and there excepted.)

The Witness:

There was a deed from Vernon and wife to G. W. Peckham, of record covering a one-fourth interest
1099 in this twenty acres, volume 111, page 253, Deed Records of Young County, Texas.

Mr. Rogers:

No technical objection will be made to counsel's offering the copy of such deed if found to exist. The specific

objection is made that under counsel's statement that he recorded the deed, conveys to G. W. Peckham one-fourth interest the trustee caused the trust book to reflect a sale to the trust, or a half interest of such sale so acquired by him, which is another, and an added reason why the trust could not be bound by the act of the trustee in acquiring from the Vernon's one fourth interest conveying one-half thereof, to the trust and retaining a free ride upon the remaining half.

The Witness:

I do not have a copy, except reference to a deed, there is a deed of record covering one-fourth interest in the royalty to Peckham. It shows that Peckham paid $3,000.00 for the one-fourth interest. My investigation shows that Peckham expended, of this, $11,000.00, $11,490.75. Other evidences of expenditure of this money besides the check of $1,000.00 is a check on the City National Bank by G. W. Peckham payable to the order of the City National Bank at Olney, for $1,997.00. It is the Vernon Royalty, the notation on the corner to that effect.

Mr. Humphrey:

We offer the check in evidence, Plaintiff's Exhibit 183.

1100 PLAINTIFF'S EXHIBIT 183.

Farmers State Bank, Olney, Texas Jun. 29, 1925 Pay to the order of City National Bank Olney $1997.00 (In Pencil) Vernon Royalty Customers Draft Value received and charge to account of City National Bank, Wichita Falls. (Signed) G. W. Peckham (Perforated) Paid 7-2-1925.

The Witness:

The date of the mineral deed from Vernon to Peckham is June 22, 1925, filed for record July 1, 1925. The records show the expenditure of the $11,000.00 as follows, the check for $1,997.00 and escrow fund for $1,000.00

plus this $9,493.75, aggregating $12,490.75, consisting of Murchison & Fain's checks for $9,493.75. That was given on property No. 80, which is the South Anderson Ranch property, 217 acres. Check given to the City National Bank of Olney for $1,997.00 to the purchase of Vernon Royalty, and his deposit to the escrow fund on June 23, 1925 of $1,000.00. I do not have Mr. Peckham's check showing he paid $1,000.00. I identify that, it was a deposit on June 23, 1925, and dated the date of the escrow June 22, 1925, and the date of the check was June 29, for $1,997.00. The Vernon Royalty that we are talking about here is named for the man who signed the deed. It is out of the Young County property and is not to be confused with the Stephens Royalty in south Vernon. This $1,997.00 less $3.00 revenue stamps would aggregate the $3,000.00 purchase price of the Pointevant royalty sold by Vernon to Peckham. I do not have any data on that item.

1101 The voucher notation on check No. 598 shows, purchase oil runs to apply on purchase of $4,200.00 oil runs due from the Roxana on the Milner, Wilbarger County, Texas, price $3,000.00. This check $500.00.

The next voucher, 602, purchase of oil runs to apply on purchase of $4,200.00 in oil runs due from Roxana Petroleum Corporation on C. J. Milner lands, Wilbarger County, Texas, purchase price $3,000.00. This check for $1,000.00.

No. 607, voucher, purchase oil runs to apply on purchase of $4,200.00 in oil runs due from Roxana Petroleum Corporation on C. J. Milner land, Wilbarger County, Texas, purchase price $3,000.00.

Voucher 610, purchase of oil runs to apply on purchase of $4,200.00 oil runs due from Roxana Petroleum Corporation, J. T. Milner land, Wilbarger County, Texas; purchase price $3,000.00, this check $1,000.00.

All of the checks, except 598, were indorsed by B. L. Fain and G. W. Peckham and deposited to Mr. Peckham's personal account. Check No. 598 was indorsed B. L. Fain, and evidently deposited by him in the Security

National Bank, Wichita Falls, Texas, for $500.00. It was not deposited in the City National Bank. I do not say that it is the genuine signature of B. L. Fain on the last three checks, it purports to be his indorsement. It is the genuine indorsement of George Peckham on the back of the check and it is not the genuine indorsement of B. L. Fain, in my judgment. I believe George Peckham made both indorsements. George Peckham and
1102 B. L. Fain were good friends and partners in several transactions.

As to the disposition George Peckham made of the funds that were deposited to his credit; On April 22, 1927, I have a check payable to B. L. Fain for $1,000.00, signed G. W. Peckham and indorsed B. L. Fain and cleared by the Security National Bank on April 23, 1927, paid by the City National Bank on April 23, 1927. That bears the genuine indorsement of B. L. Fain.

Mr. Humphrey:

We offer the check in evidence, and the rest of the checks, four in all, marked Plaintiff's Exhibits 184, 185, 186, 187, 188 and 189:

PLAINTIFF'S EXHIBIT 184.

Wichita Royalty Company, Wichita Falls, Texas, No. 602. April 23, 1927 (in red pencil) Dep. to cr. GWP 4-23-27. When properly indorsed pay to the order of B. L. Fain $1,000.00. To the City National Bank, Wichita Falls, Texas. Wichita Royalty Company, by E. E. Scannell for trustee. "7" Indorsed B. L. Fain, G. W. Peckham. Perforated Paid 4-23-27.

PLAINTIFF'S EXHIBIT 185.

Wichita Royalty Company, Wichita Falls, Texas, No. 607. (In red pencil) Dep to cr. GWP 5-6-27, May 6, 1927. When properly indorsed pay to the order of B. L. Fain

$500.00. To the City National Bank, Wichita Falls, Texas. Wichita Royalty Company, by E. E. Scannell, for trustee. (Perforated) Paid 5-6-27. "7" Indorsed B. L. Fain, G. W. Peckham.

1103 PLAINTIFF'S EXHIBIT 186.

Wichita Royalty Company, Wichita Falls, Texas, No. 610 (in red pencil) Dep. to Cr. GWP 5-16-27, May 16, 1927. When properly indorsed pay to the order of B. L. Fain $1,000.00. To the City National Bank, Wichita Falls, Texas. Wichita Royalty Company, by E. E. Scannell for trustee. "7" (Indorsed) B. L. Fain, G. W. Peckham.

PLAINTIFF'S EXHIBIT 187.

Wichita Royalty Company, Wichita Falls, Texas, No. 598. April 11, 1927. Pay to the order of B. L. Fain $500.00. To the City National Bank, Wichita Falls, Texas. Wichita Royalty Company, by E. E. Scannell for trustee. Indorsed B. L. Fain, G. W. Peckham. Perforated Paid 5-16-27.

PLAINTIFF'S EXHIBIT 188.

Wichita Falls, Texas, Texas 4-22-1927, No. ..... "2" The City National Bank of Wichita Falls. Pay to the order of B. L. Fain $1,000.00. (Signed) G. W. Peckham. Indorsed B. L. Fain. "3" Perforated Paid 4-23-27.

PLAINTIFF'S EXHIBIT 189.

Wichita Royalty Company, Wichita Falls, Texas, No. 317 (in red pencil) Dep. to cr. GWP 12-23-24. "6" When

properly indorsed pay to the order of G. W. Peckham $695.00. To City National Bank, Wichita Falls. Wichita Royalty Company, by E. E. Scannell, for trustee. Indorsed G. W. Peckham. Perforated Paid 12-23-24.

1104 The Witness:

The records show that the Wichita Royalty Company had an assignment to this property. Voucher notation record, No. 611, dated May 18, 1927, Wilbarger County, Clerk, $1.00. It says, "Recording fees, Recording assignment oil debt on Roxana Milner, $1.00." I find among the records of the Wichita Royalty Company an assignment to that property, it is Defendant's Exhibit 44, already offered in evidence. It shows a conveyance of this Milner—this oil payment on the Milner property. The records of the Wichita Royalty Company show a payment made to it from this oil payment.

In paragraph 80 of the cross complainant's bill of complaint, wherein he charges the sum of $2,400.00 was issued by check of Wichita Royalty Company and deposited to Mr. Peckham's account, that is the same check as No. 650, that I have heretofore testified about and explained.

Check No. 317, the voucher on that shows, to purchase 1/16th of 1/8th royalty in 125 acres known as block 46 of the Mead L. M. pasture subdivision of the D. G. Thomas Survey, abstracts 458, Archer County, Texas, $695.00.

The deed which you now hand me from F. O. Harrell to G. W. Peckham trustee for the Wichita Royalty Company, the description of the land corresponds to the interest conveyed with the notation on the voucher.

Mr. Humphrey:

We offer the deed and the check in evidence.

(Plaintiff's Exhibit 189 heretofore copied in this record.)

1105 PLAINTIFF'S EXHIBIT 190.

Mineral Deed. F. O. Harrell to G. W. Peckham, trustee for Wichita Royalty Company.

Consideration $10.00.

Conveying an undivided 1/128 interest in and to all of the oil and gas and other minerals in and under and that may be produced from the following described land situated in Archer County, Texas.

125 acres known as block #46 of the Meade L. M. Pasture Subdivision of the D. G. Thomas Survey, Abstract 458. The above described 1/128 interest is meant to be 1/16 of the 1/18 royalty reserved by the lessor under leases thereon as hereinafter referred to.

$1.00 documentary stamp, canceled.

Together with the right of ingress and egress at all times for the purpose of mining, drilling and exploring said land for oil, gas and other minerals, and removing the same therefrom.

Said land being now under an oil and gas lease executed in favor of G. I. Dorrance & Hobbs Chenault & Burleson, it is understood and agreed that this sale is made subject to the terms of said lease, but covers and includes 1/16 of all of the oil royalty, and gas rental of royalty due and to be paid under the terms of said lease.

Dated December 16, 1924.

Duly acknowledged.

Filed for record on the 24th day of December, 1924, at 3:00 o'clock P. M.

1106 Recorded December 27, 1924, at 11:30 P. M. in the deed records of said county, Volume 93, page 556.

The Witness:

The check bears the genuine indorsement of Mr. Peckham, he received credit for $695.00, and I have the deposit slip, which shows that the money was deposited to the credit of G. W. Peckham.

Mr. Humphrey:

We offer the deposit slip in evidence, Plaintiff's Exhibit 191.

PLAINTIFF'S EXHIBIT 191.

City National Bank. Deposited by G. W. Peckham, Wichita Falls, Texas, 12-23-1924. Checks as follows:

"6"	695.00
	7.37
	702.37

The Witness:

I have investigated and identified the payment of the identical fund corresponding to that. On the same day G. W. Peckham received credit for this $695.00, which was December 23, 1924, he gave F. O. Harrell a check for $4,000.00. He had various dealings and paid Mr. Harrell various amounts of money, his transactions with Mr. Harrell along about that time were considerable. Several thousand dollars in dealings between them. I have not been able to identify the identical transaction where he paid F. O. Harrell the identical sum of money represented by this check, unless it is covered
1107 by this $4,000.00 payment to Harrell. F. O. Harrell lives in Oklahoma City.

Mr. Rogers:

At this time we wish to offer in evidence DEFENDANT'S EXHIBIT 123, as follows:

Being a contract between G. W. Peckham and Wichita Royalty Company, dated March 12, 1923, whereby G. W. Peckham sold and the Wichita Royalty Company bought 3/128ths royalty interest in the J. E. Dowdle Survey, Young County, Texas, for a recited consideration of $2,500.00 cash, the receipt of which was acknowledged; $2,500.00 thirty days from date, $2,500.00 sixty days from date; interest at eight percent on deferred payments. Oil runs from date to be applied as credit on final payment, and was placed in the First National Bank in escrow. On the margin of the contract bears this indorsement, "5-15-23 all provisions herein complied with, oil and gas grant delivered to G. W. Peckham. (Signed) G. W. Peckham. Wichita Royalty Co. by G. W. Peckham."

1108 The Witness:

My testimony heretofore given is based upon weeks and months of investigation and survey of the various records and books of the interested parties to this transaction. We have had to dig a lot of the records out of the files of the bank for the past thirteen years, we have had to travel over the biggest part of Texas gathering up other information, we have examined copies and photostatic copies of the books of the Wichita Royalty Company, and checked the records of the various county clerks' offices, also other banks' records where it was possible to do so, also Mr. Peckham's checks and records, such as he had. As well as the Marlborough Addition and the Texas Investment Company. The Wichita Royalty Company gave us access to such books as they had, except the ones that were lost, and the stockholders ledgers. I have examined the liability ledger and the deposit ledger in the City National Bank of the various parties, Mr. Harrell and Mr. Peckham, and

the original deposit slips which covered the period from 1923 up to date. I had Mr. Lambert to assist me in this investigation and he is a Certified Public Accountant. During this period of time covered by these investigations, I have determined how much money was deposited to the individual account of Mr. George W. Peckham in the City National Bank, from January 1, 1923 to November 6, 1929, it is $1,608,999.13. On the day of his death, George Peckham had on deposit to his personal credit $615.31. There were one thousand and ten items that made up the total deposit of $1,608,999.13. Forty-six of those items, from 1923 to 1929, came as a result of transfers of deposits, traceable as a loan from the funds of the Wichita Royalty Company. Excluding his salary checks, eleven percent of the funds deposited to his individual account during this period of time came from the account of the Wichita Royalty Company, or were represented by funds that I could trace as funds of that company—I refer to the royalty purchased that never went into the Royalty Company account. I have the percent by years as well as the items by years. Three percent in items, in 1923, of the total funds deposited in that year, came from the account of the Wichita Royalty Company, and four percent in amount. Two percent of the items and nine percent of the funds in 1924. Two percent of the items and four percent of the funds in 1925. Twenty percent of the items and forty percent of the funds in 1926. Twelve percent of the items and sixteen percent of the funds in 1927. Three percent of the items and three percent of the funds in 1928. In 1929, there were no transfers.

1109

I will give briefly the operation of a commercial bank: the deposit accounts are handled by paying and receiving tellers who take in the deposits and pay out the money as checks are presented to them for payment at the window, for cash. The bookkeeping department is handled by a group of bookkeepers with one man in charge of the department. Of course, checks are cleared

on the bank from all parts of the United States, mail coming in from every source everywhere. The majority of the items come through the Federal Re-
1110 serve Bank and the larger banks of Dallas, Houston, Fort Worth, Oklahoma City, St. Louis and Kansas City, and items come in from New York and San Francisco and Los Angeles, these come in daily. They are proven as they come in. From those various Banks, to show that their totals are correct, and they are assorted to the different bookkeepers. The checks that come in through the local banks are checked every morning at a certain time, and they are sorted and given to the bookkeeper. The checks, the tellers handle through their cages during the day, are run to the bookkeeping department and given to the various bookkeepers who line the checks up and post them to the individual account on which they are drawn, together with any deposits that might be made. The checks are then turned over to a file clerk and canceled and filed away. At the end of the month they are made up, together with the statement, and they are delivered to the person, or the person calls for the statement. The note department is on the opposite side of the bank from the paying and receiving tellers, they handle the note department. They receive the payment on the notes and they run out the credits for loans that have been made. The bookkeeper in the note department is in that department at all times, and in no way has anything to do with the keeping of the books on the other side of the house. That is all he does, is to take care of the liability ledger of the note and discount department. The teller, either paying or receiving, when he re-
ceives a deposit, does not check the liability
1111 of the depositor, to see what he owes the bank, it is not his duty to do so. His specific duty is to take in the deposits and pay the funds out for checks presented to him for cash at that window. Upon the genuine signature of the parties authorized to draw them. During this period of time the Wichita

Royalty Company also transacted business with the bank. I have not figured up its account with the bank during that period, but it was an active depositor and customer of the bank. During this period of time it carried a substantial balance with the bank, it was fairly active. There was nobody else, so far as I know, except Mr. Peckham and Mr. Scannell, who had charge of the Wichita Royalty Company office. I never knew any of the stockholders of that company except those two men. Mr. Scannell and Mr. Peckham were authorized representatives of the Wichita Royalty Company who drew checks against the account of the company.

As to how many checks were handled by the City National Bank during this period of time, would be a guess, because I have handled thousands of items each day, through the bookkeeping department and the teller. The paying of checks and the receiving of money by the tellers, is in the nature of a rather rapid transaction. The executive officers of the bank do not have anything to do with the taking in of the money as a general rule, or the paying out of it, that is a duty delegated to the employees known as the tellers.

Most of the time from 1923 up until the death of Mr. Peckham the Wichita Royalty Company
1112 was a borrower from the City National Bank. Those loans were made by the Wichita Royalty Company upon comparatively short periods of times, renewals, etc., the customary date of a renewal or extension of a note was sixty to ninety days. Ten days prior to the maturity of the note or loan the discount department would send a notice to the Royalty Company that their note would be due on a certain date, and that amount would be stated on the notice. That was a universal rule of the bank, to send such notices at the maturity of the note, which notice showed the amount of the note that was due, when due, it is a printed form, and the name of the borrower is typed in and their address and the date due and the amount. From 1923 up until the death of Mr. Peckham, I would

say that those notices were duly sent to the Wichita Royalty Company at the maturity of its notes. I was in the note department a portion of that time.

Cross Examination.

By Mr. Rogers:

In giving the result of my tabulation of items transferred from the Royalty Company's account to Mr. Peckham's personal account, I excluded four or five hundred dollar payments monthly received by Mr. Peckham, which he caused the trust books to show in payment of executive salaries. The salary checks were cashed and most of them deposited to his personal account.

I have now examined a group of checks issued by the Wichita Royalty Company, against the deposit
1113 account in the City National Bank, payable to the order of G. W. Peckham, being 71 in number. Each of such checks were charged against the Royalty Company's deposit to the bank and credited by deposits to the account of G. W. Peckham with the bank.

Mr. Humphrey:

I am informed that all of these are salary checks. We might agree that the voucher notations on each one of these checks showed that they were for the salary of George Peckham trustee.

Mr. Rogers:

It is so agreed and we will want the dates and the amount of each transfer.

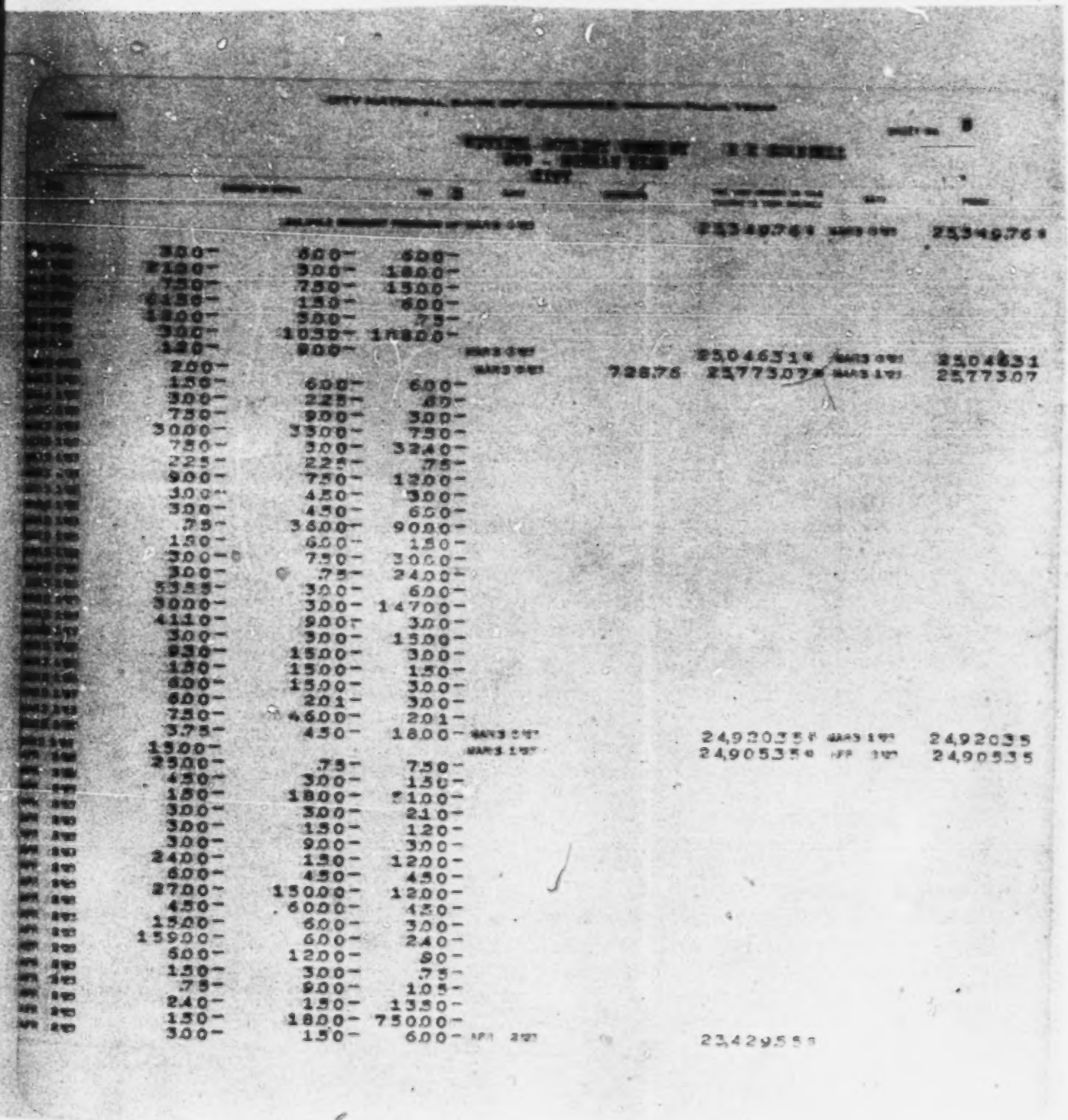
The Witness:

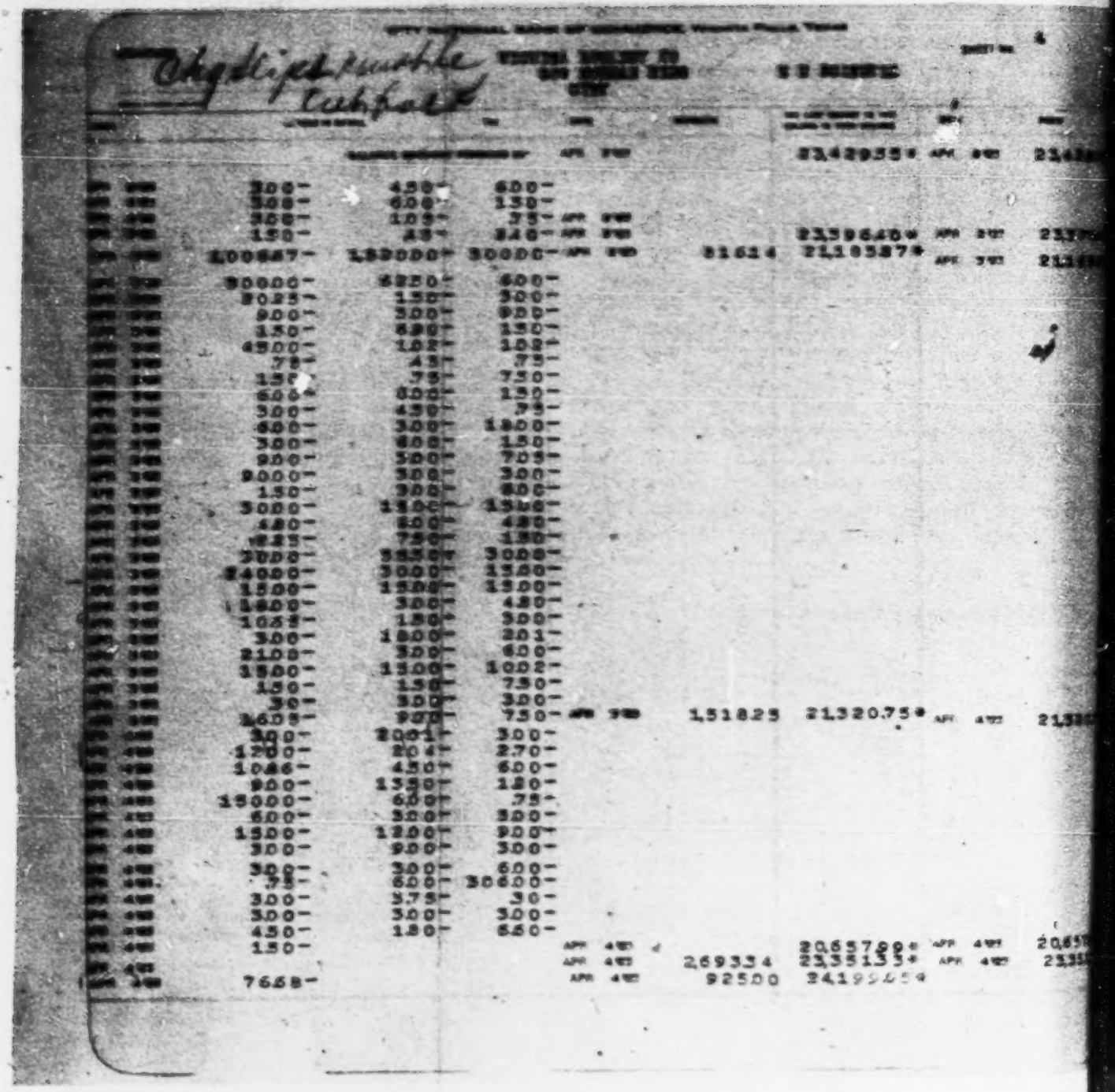
The aggregate total of such items drawn on the City National Bank is $30,100.00, deposited to the personal account of G. W. Peckham with the bank.

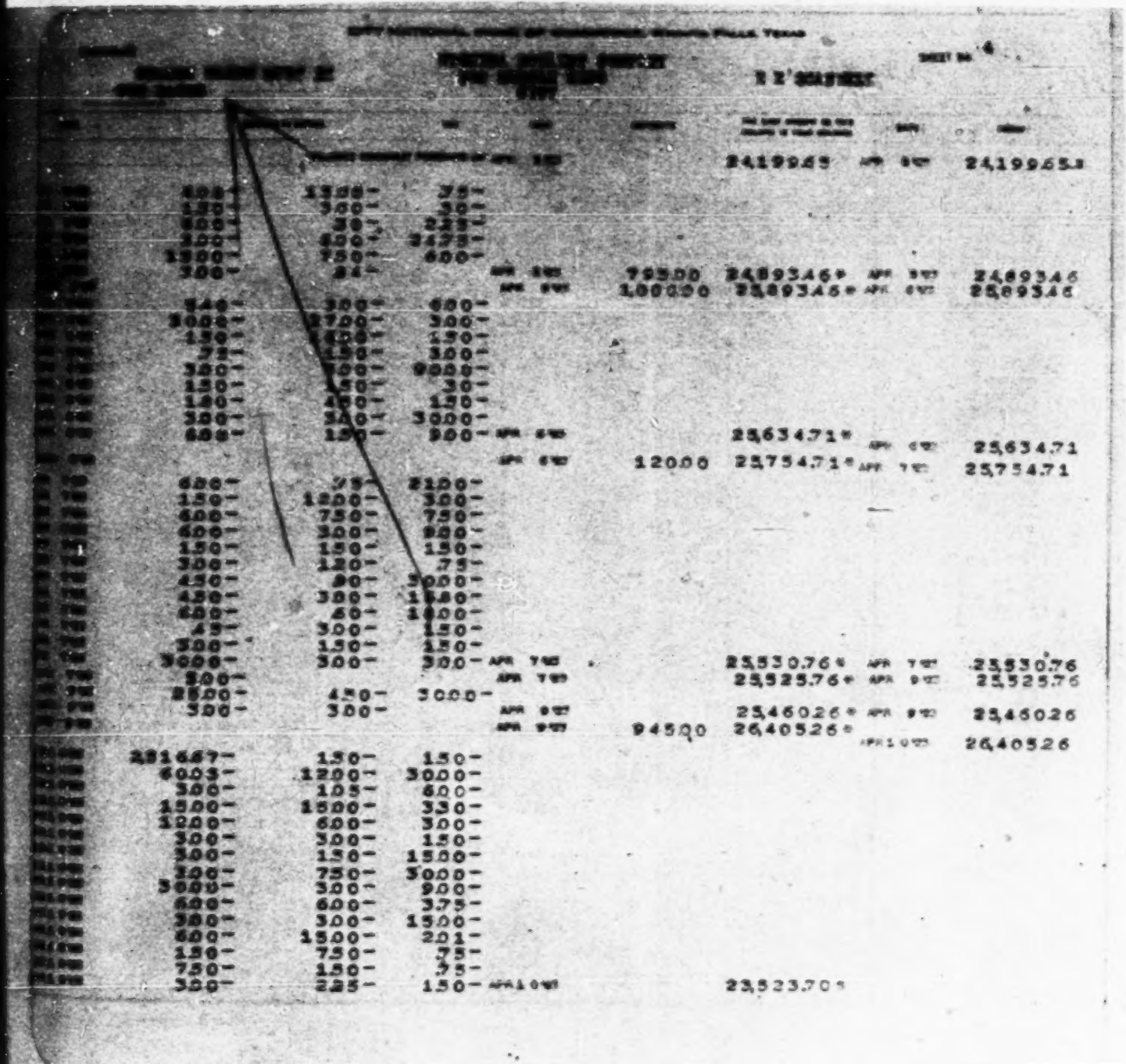
The source of $400.00 deposited to the personal account of G. W. Peckham on May 8, 1926, is currency. And the check of the Security National Bank for $600.00, on the same day, May 8, 1926, to cash, a check out of the Security National Bank for $400.00, canceled on the same day at that bank, was not run through the City National Bank. On that day he deposited $400.00 in currency in the City National Bank, together with a check for $600.00, drawn on the Security National Bank—I could not tell you who it was drawn on. Check No. 497 payable to G. W. Peckham, Wichita Royalty Company checks, $400.00, May 5, 1926, my information is that that check was cashed. He cashed this check, Wichita Royalty Company, on May 5, 1926, at
1114 the City National Bank, and on May ?, 1926, he cashed a check at the Security National Bank. I now hand to you the bank records including these items, Wichita Royalty Company deposit records from April 1, 1923 to the date of its closing, and its liability records beginning at the same date, to the present time.

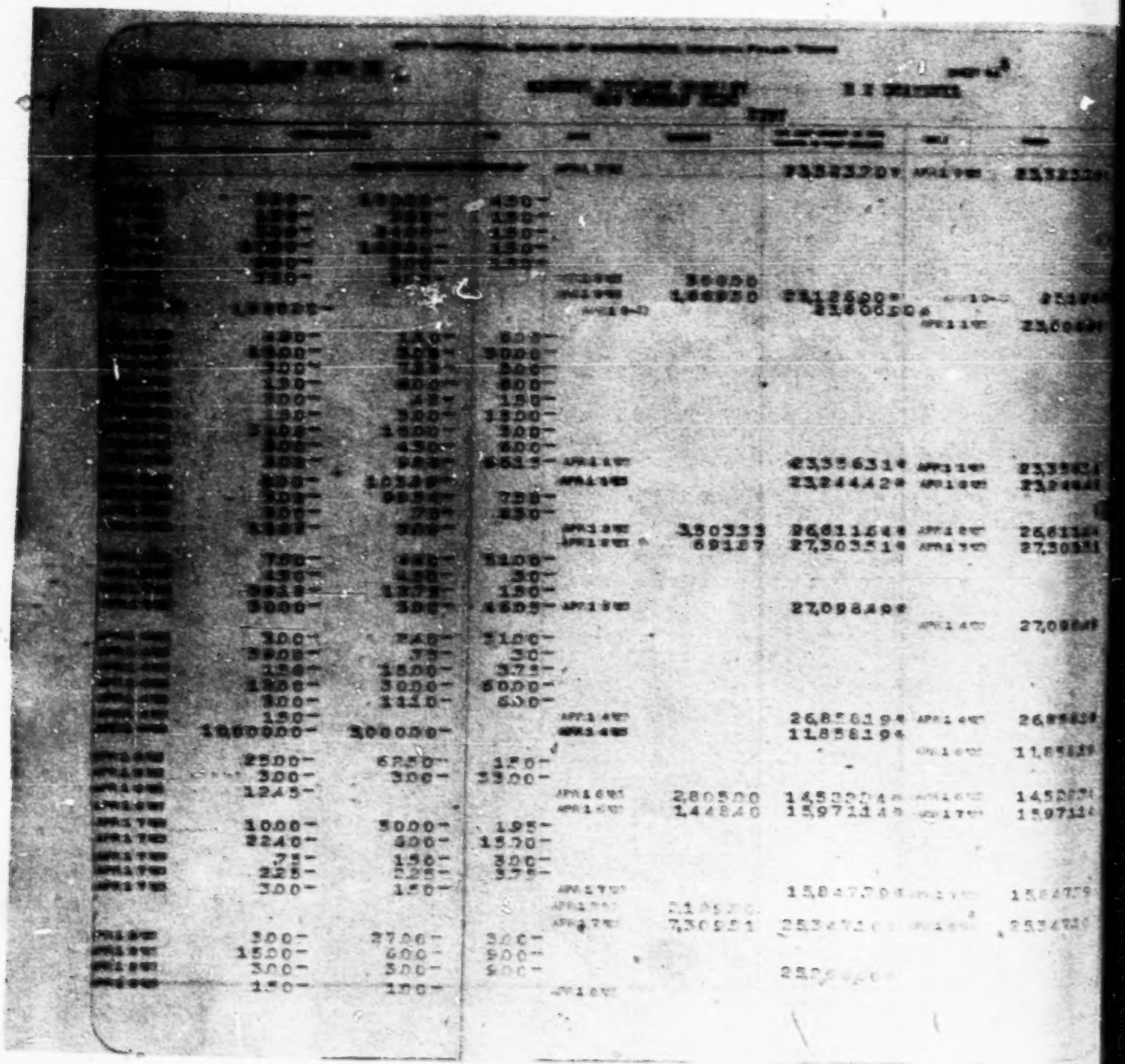
Mr. Rogers:

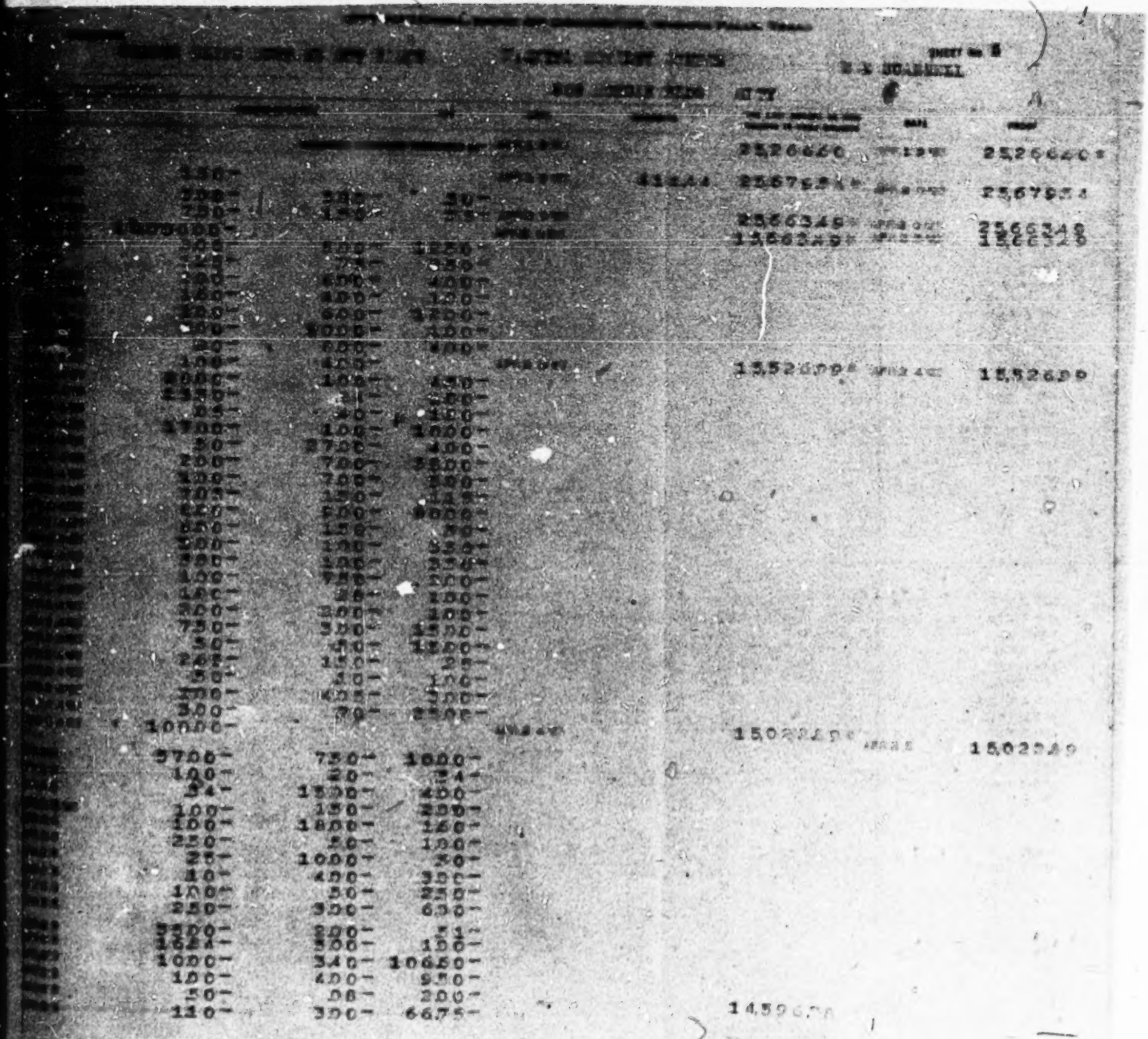
We offer the instruments in evidence, marked "Defendant's Exhibit 124".











CITY NATIONAL BANK OF COMMERCE, WICHITA FALLS, TEXAS

SIGNATURE

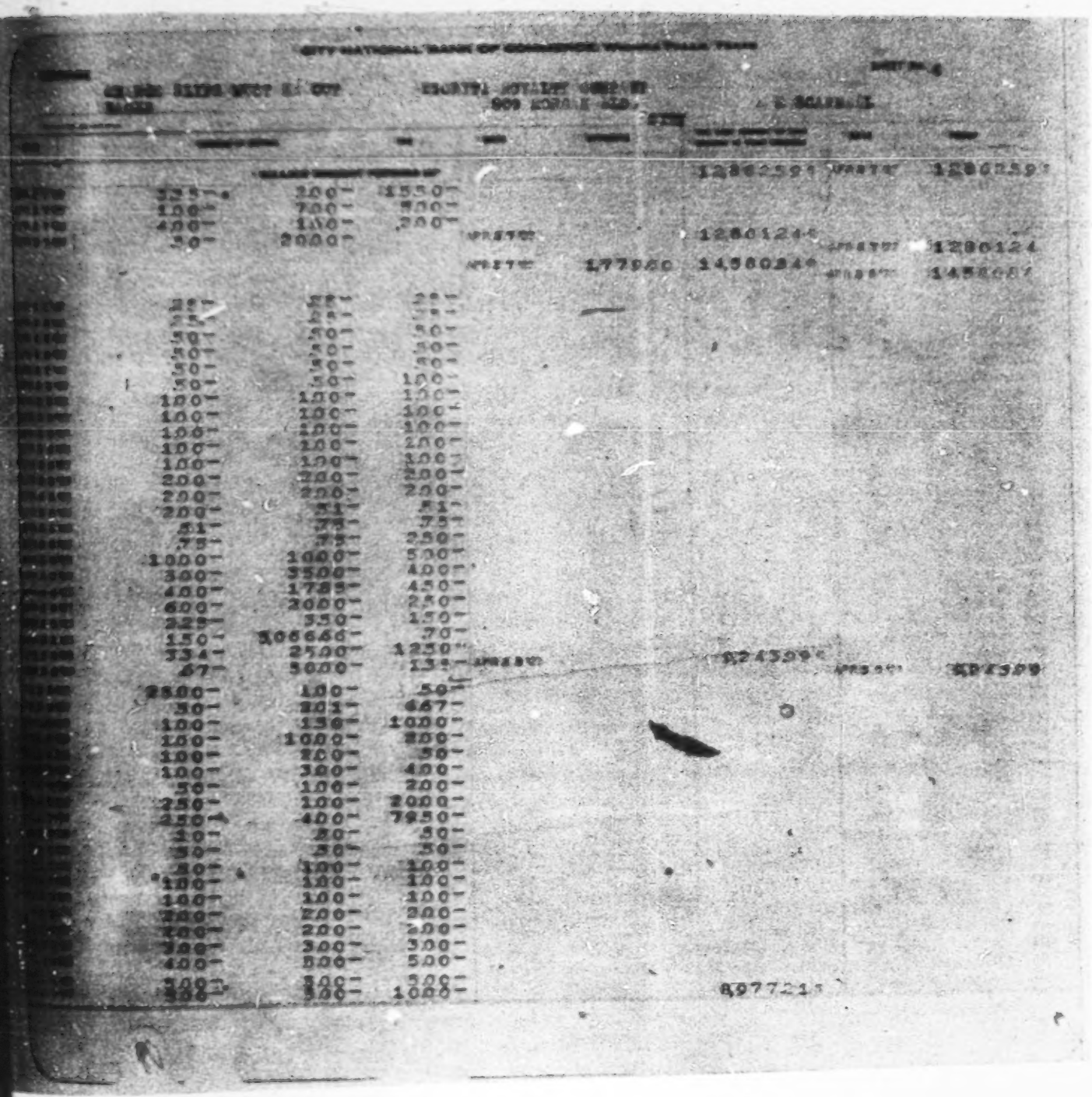
CHARGE SLIPS MUST BE OUT BACKS

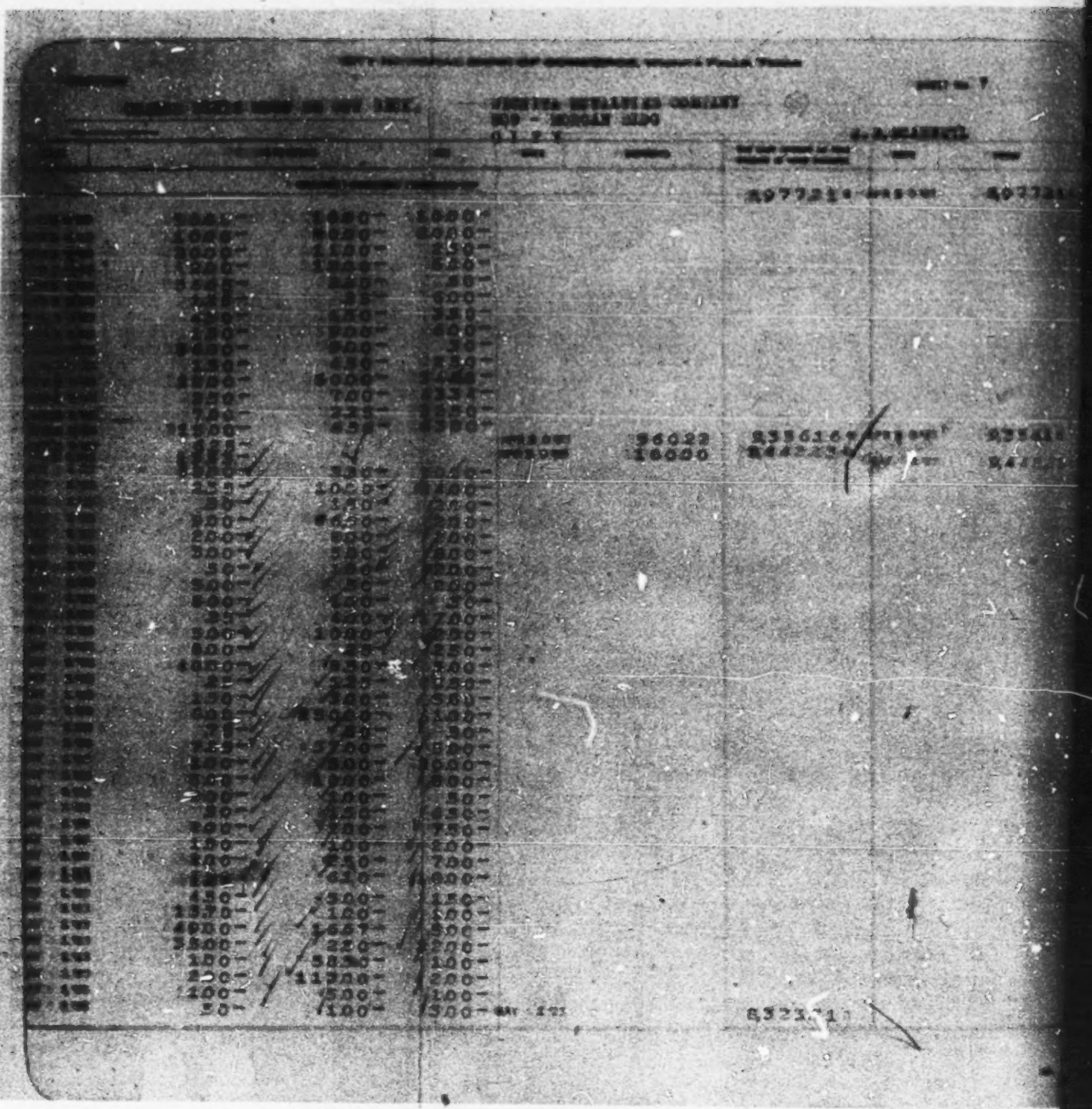
WIC(ITA) ROYALTY COMPANY
509 MORGAN BLD)
CITY

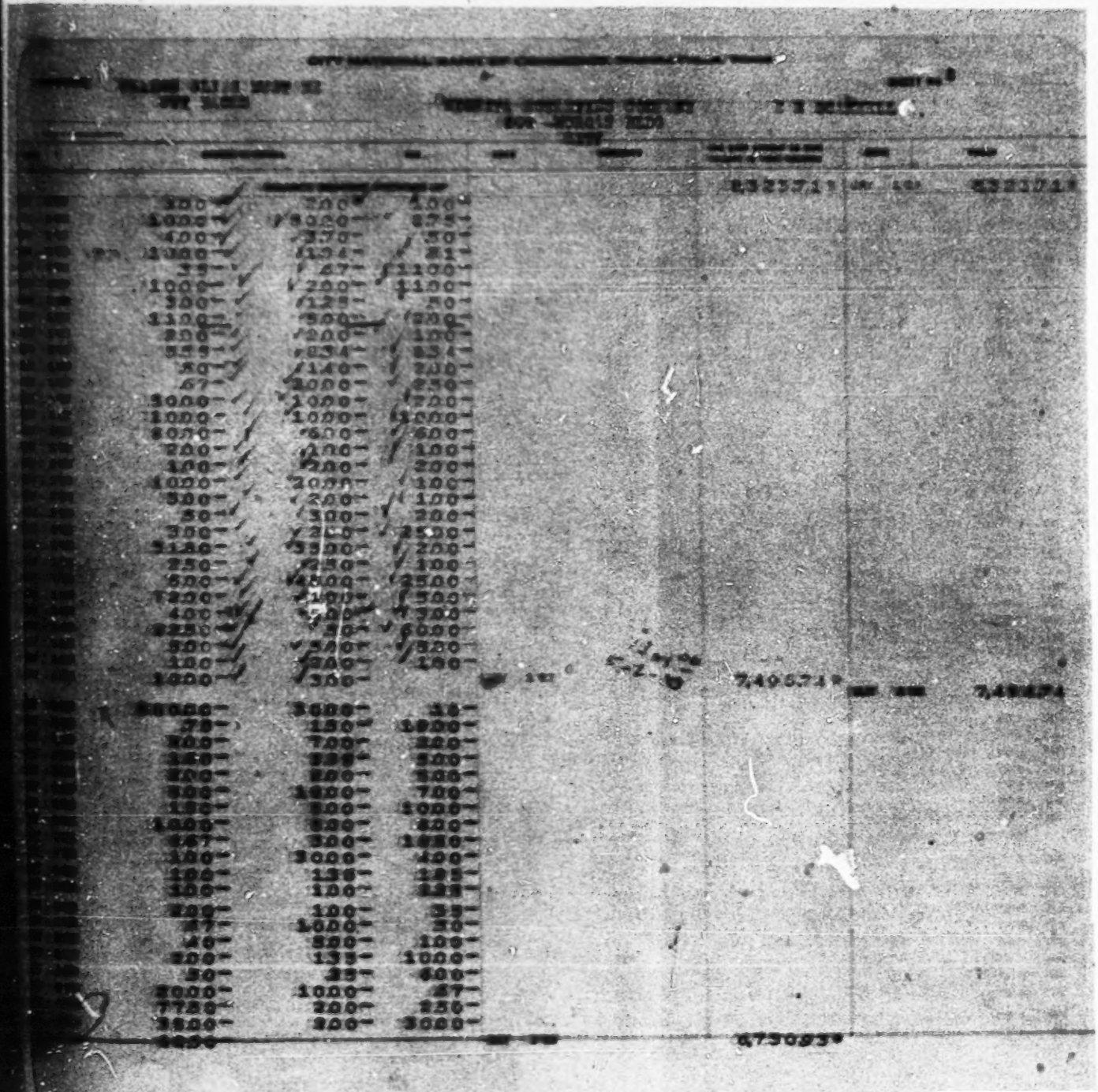
S. E. SCARBELL

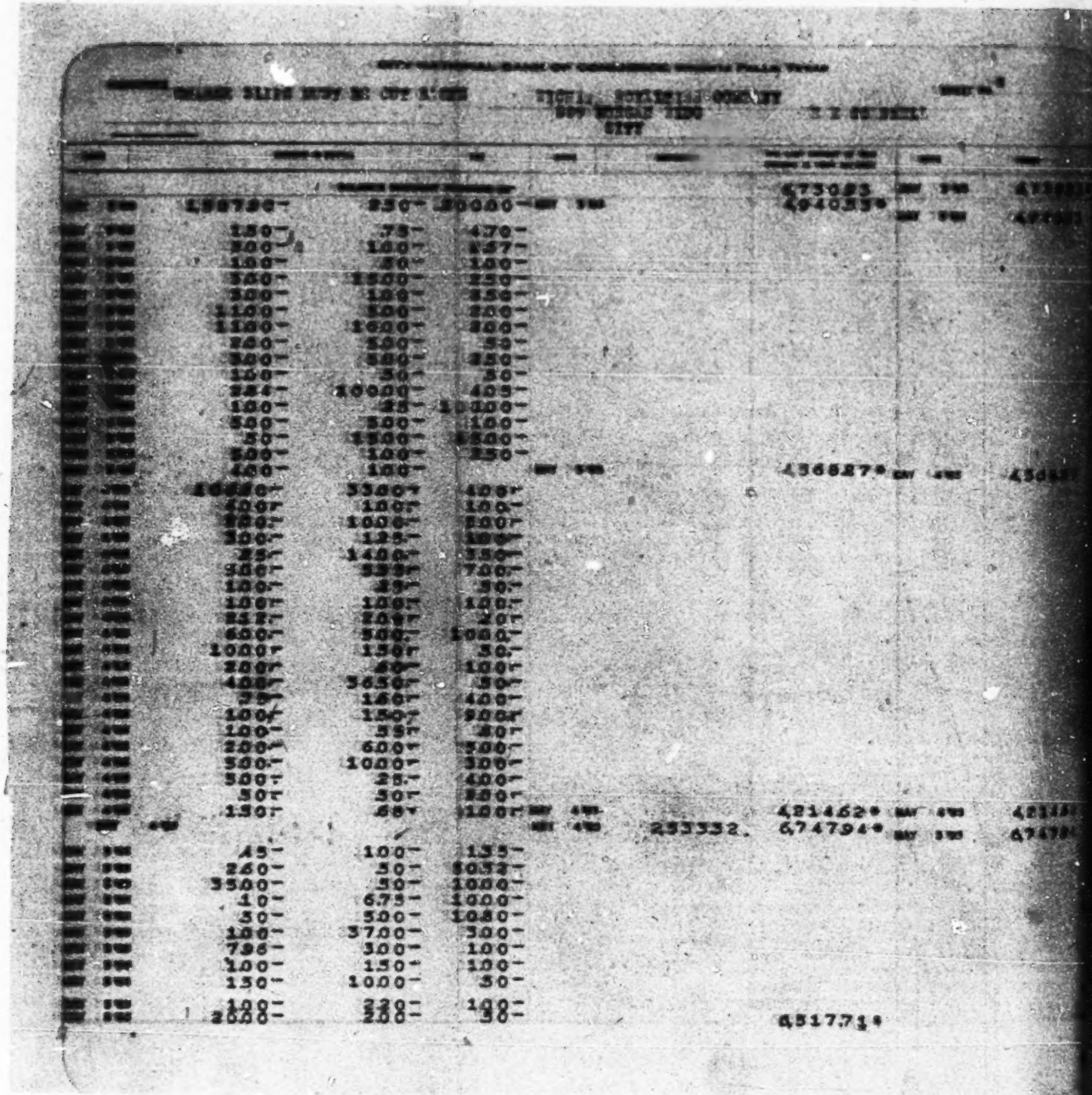
SHEET NO. 8

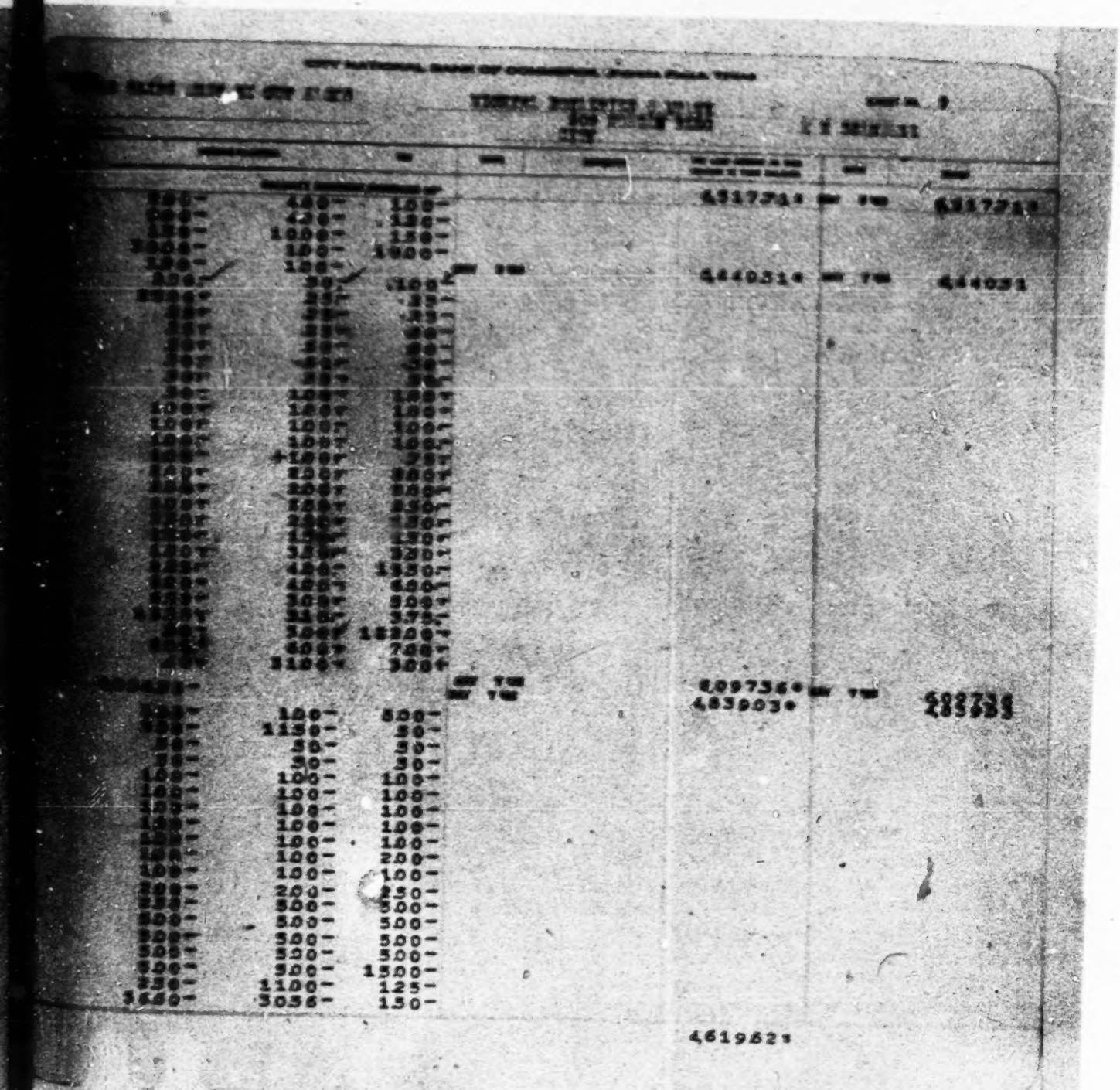
DATE	CHECKS IN DETAIL			DATE	DEPOSITS	THIS LAST AMOUNT IN THIS COLUMN IS YOUR BALANCE	DATE	AMOUNT
		BALANCE BROUGHT FORWARD 4/1				14596.78		
APR 2 5	17.70	30	25					
APR 2 5	500	1400	500					
APR 2 5	800	200	1500					
APR 2 5	1000	810	270					
APR 2 5	700	150	25					
APR 2 5	200	3500	600					
APR 2 5	15	600	3500					
APR 2 5	500			APR 2		14411035	APR 2	14411
				APR 2	1.796	1620747		
APR 2 6							APR 2 6	1620747
APR 2 6	100	50	2100					
APR 2 6	100	50	300					
APR 2 6	300	200	500					
APR 2 6	2100	200	100					
APR 2 6	3250	100	35					
APR 2 6	1500	210	200					
APR 2 6	350	200	200					
APR 2 6	100	200	200					
APR 2 6	150	125	250					
APR 2 6	1300	200	125					
APR 2 6	100	100	100					
APR 2 6	100	200	200					
APR 2 6	300	100	2000					
APR 2 6	400	2000	500					
APR 2 6	1526.66	500	200	APR 2 6		14403296	APR 6	14467
APR 2 6				APR 2 6		134	APR 2 7	13452
APR 2 7	1011314	450	1000					
APR 2 7	50	350	100					
APR 2 7	550	400	100					
APR 2 7	1000	200	600					
APR 2 7	600	300	400					
APR 2 7	2000	5350	200					
APR 2 7	500	500	250					
APR 2 7	250	50	21					
APR 2 7	1300	100	100					
APR 2 7	50	300	6000					
APR 2 7	40	25	2250					
APR 2 7	200	10	50					
APR 2 7	125	150	700					
APR 2 7	100	2500	450					
APR 2 7	500	400	700					
APR 2 7	400	5245	425					
APR 2 7	500	1500	100					
APR 2 7	244	400	500					
APR 2 7	1000	2000	40					
APR 2 7	300	25	100					
APR 2 7	100	500	500					
APR 2 7	123	200	100					
APR 2 7	400	50	50					
APR 2 7	550	7000	6500					
APR 2 7	25	600	15			13,8		

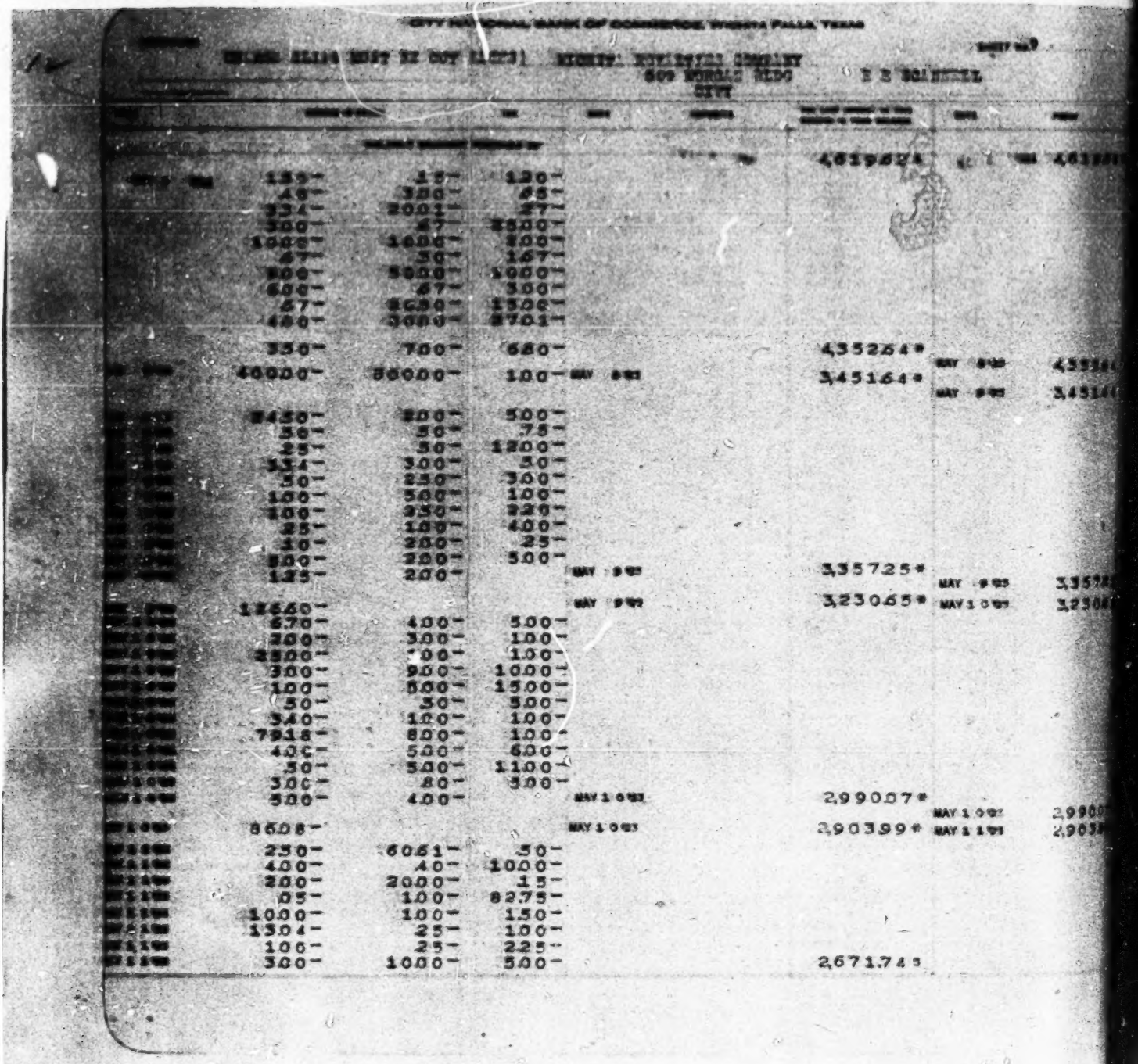


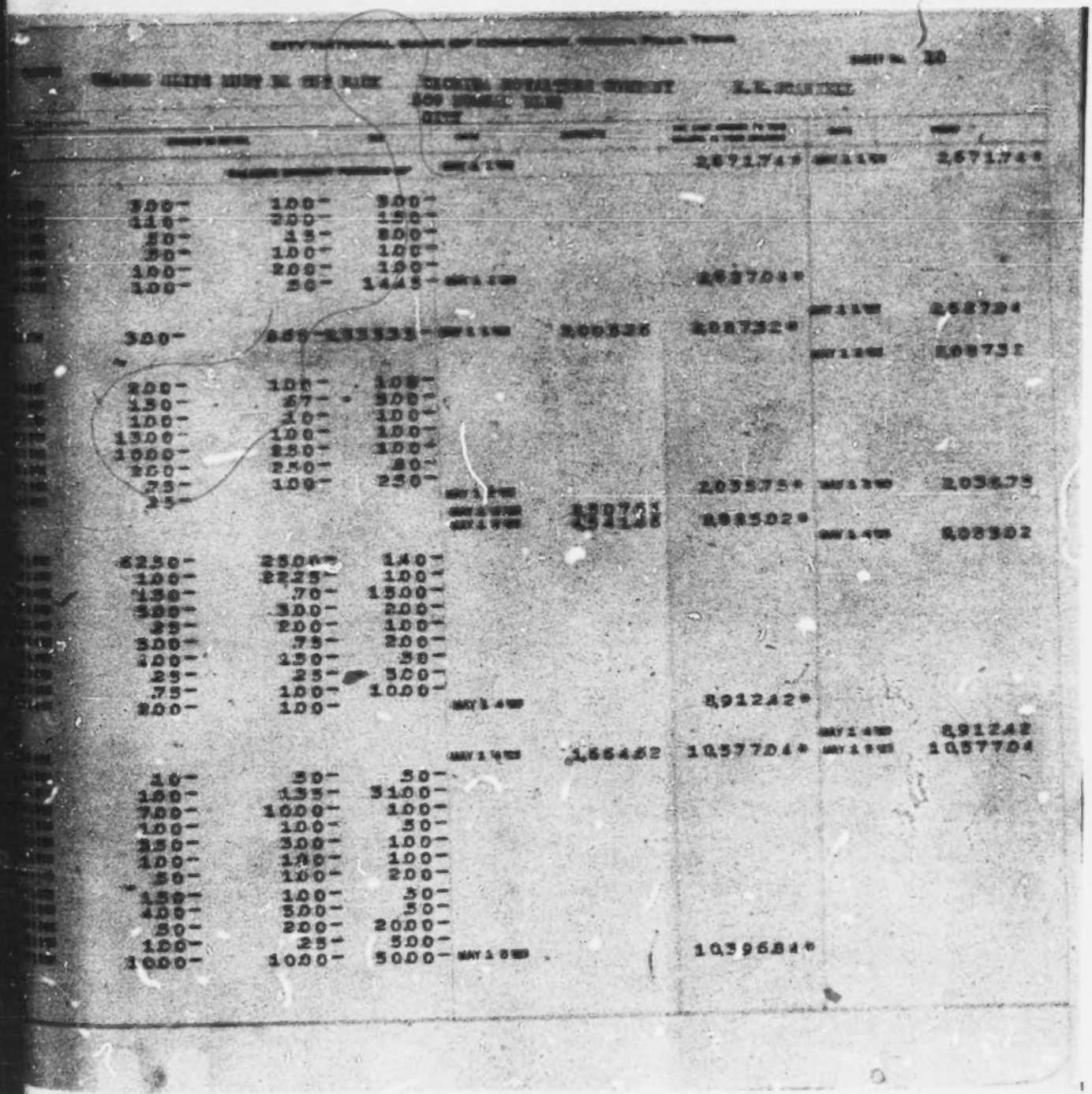












CITY NATIONAL BANK OF COMMERCE, WICHITA FALLS, TEXAS

SHEET No. 10

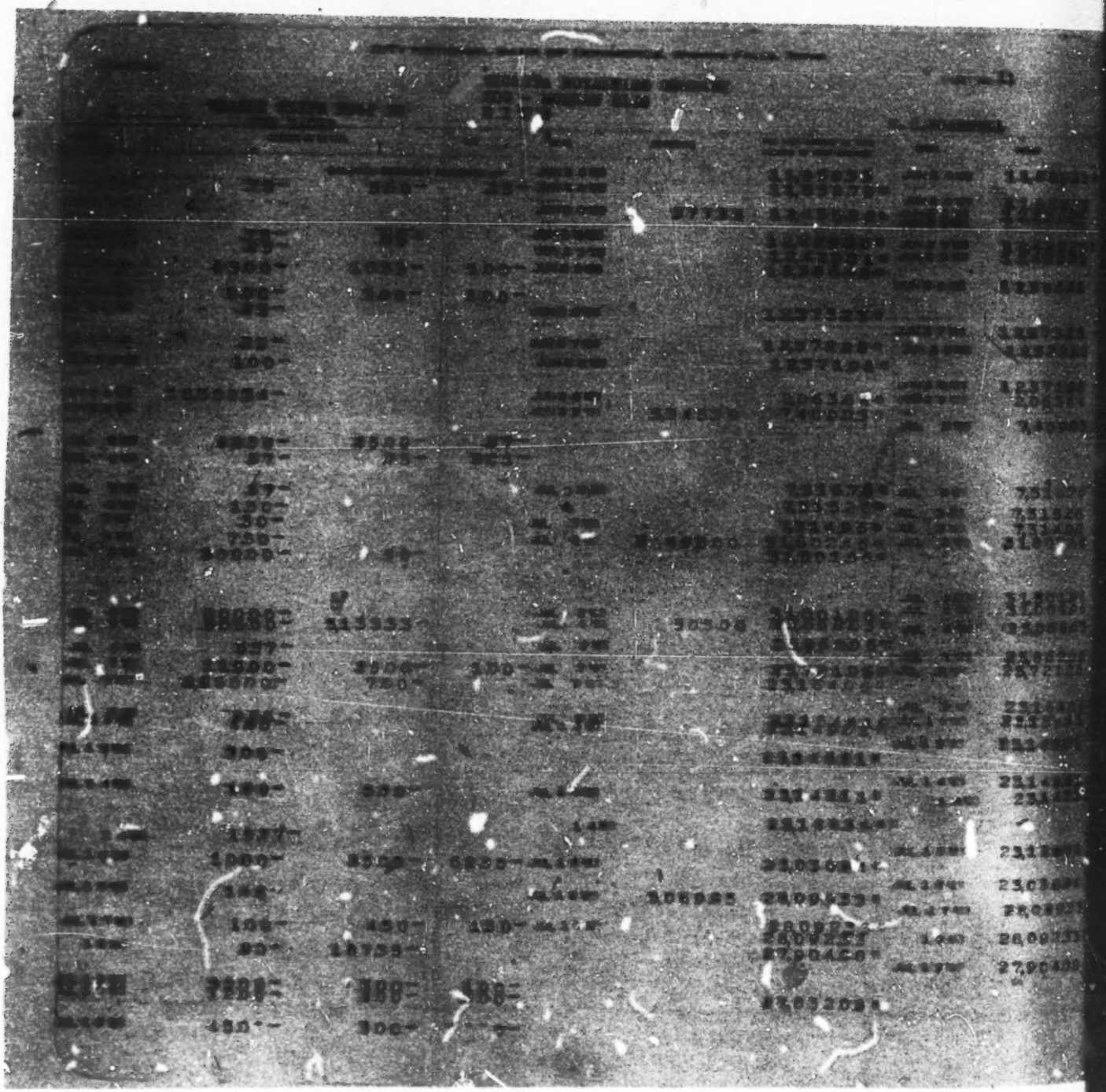
	10309-	3667-	200-			10396.84		10396.84
	100-	25-	100-					
	600-	100-	300-					
	10-	200-	50-					
	100-	200-	500-					
	1000-	125-				10230.88		10230.88
	229-	300-	1200-					
	300-	2400-	500-					
	1150-	10-	1450-					
	500-	100-			652.41			
					877.-	10901.84		
								10961.84
	1500-	40-	1003-					
	104-	250-	1675-					
	100-	100-	300-					
	3000-				15516	10970.59		10970.59
	50-	200-	300-					
	25-					10970.70		10970.70
	200-	5600-	300-					
	50-	375-	50-					
						10904.95		10904.95
					1208.72	12113.67		12113.67
	2500-	200-	100-					
	1275-	100-	50-					
	100-	20-	75-					
	25-	1500-	867-					
	100-	200-	10-					
	500-					12036.75		12036.75
	100-	100-	150-					
	200-	400-	200-					
	70-	700-	362-					
	150-	50-	100-					
	100-	200-	100-					
	500-	100-				12000.85		12000.85
	200-	25-	50-					
	400-	375-	125-					
	3009-	415-				11954.24		11954.24
	150-	50-	250-					
	480-	15-	150-					
	100-	500-			506.30	17020.59		17020.59
					2500.00	19570.59		19570.59
	10-	10000-	28-			14470.24		14470.24
	50-	100-	200-					
	300-	125-				14.4		14.4
	2000-				510.00	14.9		14.9
	200-	50-	2500-					
	1500-	600-	300-			14.9		
		50-						

CITY NATIONAL BANK OF COMMERCE, Wichita Falls, Texas

SHEET No. 11

WICHITA ROYALTIES COMPANY
909 - MORGAN BLDG
CITY

					1490135		1490135
				1633.90	16533.26		16533.26
214.-	100-	500-					
100-	5000-	100-					
20-	25-	300-					
25-	75-				16451.41		16451.41
1.-	6250-	25-					
75-	1000-	14-					
201	100-	200-			16374.92		16374.92
					16373.42		16373.42
150-					16371.42		16371.42
2000-	2000-	10-					
600-	300-	30000-			15537.32		15537.32
2000-	5620-	100-			15537.07		15537.07
200000-							
					10430.21		10430.21
150-	150-	1000-					
300-	300-				10431.21		10431.21
					10430.21		10430.21
1100-							
258133-	15-	25-					
25-					7.80		7.80
					6.80		6.80
200000-							
100-	100-	200-			6.85		6.85
600-							
150-	50-	20-			6.85		6.85
10-							6.85
5000-	700-	7100-			6.77		6.77
800-							
				1.6	8.4		8.4
500-	50-						
900-	20-				8.4		8.4
150-	300-				8.40		8.4
750-	700-						
300-	100-						
2000-							
10-							
						JAN 16 63	8.33335
120-	30-	150-	JAN 16 63		8.330.00*	JAN 16 63	8.330.00
25-	200-		JAN 19 63		8.327.75*	JAN 19 63	8.327.75
3000-	28-	100-					
30-	100-		JAN 19 63	3.58436	11.859.33*		



CITY NATIONAL BANK, WICHITA FALLS, TEXAS

SIGNATURE CHARGE SLIPS MUST BE CUT BACK

WICHITA ROYALTIES COMPANY
509 - MORGAN BLDG
CITY

SHEET NO. 12
E. E. SCANNELL

DATE	CHECKS IN DETAIL			DATE	DEPOSITS	THE LAST AMOUNT IN THIS COLUMN IS YOUR BALANCE	DATE	PROOF
	BALANCE BROUGHT FORWARD			JUL 19		27,832.08	JUL 19	27,832.08
	45.00	3.00	12.00					
JUL 19	3.00			JUL 19		27,769.08	JUL	27,769.08
JUL	3.00	3.00	60.00					
JUL	1.50	7.50	6.00					
JUL	319.80	1.50	10.20					
JUL	39.00	45.00	3.00					
JUL	1.53	19.50	9.00					
JUL	7.95	15.00	3.00					
JUL	1.50	96.75	24.00					
JUL	1.50	10.50	6.00					
JUL	.72	.25	.75					
JUL	15.00	.75	1.50	JUL				
JUL	.75	12.00	3.00					
JUL	30.00	12.00	18.93					
JUL	28.50			JUL		26,949.20		26,949.20
JUL	3.00	22.50		JUL		26,923.70		26,923.70
JUL	3.00	10.50	3.75					
JUL	6.00	1.50	60.00					
JUL	4.80	3.00	3.00					
JUL	.30	16.50	21.00					
JUL	6.00	39.00	9.00					
JUL	15.00	90.00	1.05					
JUL	6.00	1.35	22.50					
JUL	7.50	14.10	12.00					
JUL	6.00	3.00	3.00					
JUL	30.00	7.50	3.00					
JUL	30.00	3.00	.60					
JUL	24.00	6.00	.42					
JUL	18.00	.84	30.00					
JUL	[illegible]	46.50	3.00					
JUL	12.00	7.50	.30					
JUL	.75			JUL		26,316.44	JUL	26,316.44
JUL	.15			JUL		26,331.29	JUL	26,331.29
JUL	25.00	.75	.25					
JUL	4.20	3.00	.75					
JUL	37.50	6.00	7.50					
JUL	6.00	15.00	53.10					
JUL	3.00	45.00	30.00					
JUL	3.00	.75	6.00	JUL				
JUL	6.00	285.00	45.00					
JUL	63.00	24.00	3.00					
JUL	.75	1.50	9.00					
JUL	3.00	.45	12.00	JUL		25,631.79		

CITY NATIONAL BANK WICHITA FALLS TEXAS

	10500	1605	600		
	600	5400	500		
	150	1500	1800		
	120	450	600		
	360	3000	200		
	300	150	19500		
	1200	450	1500		
	3600	6000	300		
	600	300	300		
	600	600	50		
	150	600	450		
	1200	1500	1050		
	1500	900	300		
	10920	270	300		
	300	2100	1800		
	150	75	600		
	300	675	3240		
	150	210	600		
	300	150	3000		
	1500	450	600		
	300	75	600		
	3900	3300	600		
	750	300	1200		
	1050	3000	300		
	150	150	2100		
	150			24468.79	
	1800	75			
	300	900	300		
	375	300	900		
	750	23754	1500		
	30	300	10		
	30	150	75		
	153	153	150		
	750	153	378		
	150	17100	150		
	600	600	600		
	300	150	1500		
	600	8400	300		
	600	60000	150		
	300	300	1500		
	600	105	300		
	45	300	10500		
	300	300	750		
	375	300	300		
	2700	1200	4500		
	3000	300	3900		
	450	300	1500		
	1500	9750	1500		
	750	300	1800	23325.96	

1243 Mr. Rogers:

Also the liability account of W. H. Peckham.

(Marked "DEFENDANT'S EXHIBIT 130," as follows:)

Old Balance	Date	Time	Rate	Number	Debit Amt.	Cr. Note Paid	Balance
6,120.00	Mar. 9, 1926			71339		8.00	
						4,582.00	
	Mar. 9			72286	8%	6.89	
						1,013.11	
	Mar. 9			72349	8%	3.66	
						506.34	.00*
	Mar. 23	60	8%	75457	2,500.00		2,500.00*
2,500.00	Mar. 30	60	8%	75865	2,500.00		5,000.00*

1244 The Witness:

I do not know the aggregate total of money that was transferred from the Wichita Royalty Company's account to G. W. Peckham's account in the City National Bank during the trusteeship of G. W. Peckham, I will try to figure that out for you. During the trusteeship of G. W. Peckham, he paid out $201,165.89 from his personal account with the plaintiff bank, to the plaintiff bank upon his personal indebtedness to the bank from January 1, 1923, to the date of his death. I will give the dates and the amounts of those items.

February 2, 1923, $594.75; March 5, 1923, $1,000.00; March 6, 1923, $500.00; March 8, 1923, $500.00; March 8, 1923, $500.00; April 23, 1923, $4,994.15; May 15, 1923, $1,008.55; June 22, 1923, $3,050.60; August 10, 1923, $3,985.78; November 13, 1923, $1,000.00; November 20, 1923, $2,000.00; November 22, 1923, $1,000.00; November 30, 1923, $1555.82; February 5, 1924, $67.67; February 21, 1924, $5,022.28; March 17, 1924, $10,000.00; May 1, 1924, $2,048.07; June 7, 1924, $4,027.47; June 7, 1924, $1,000.00; June 11, 1924, $234.22; July 3, 1924, $967.67; August 2, 1924, $58.77; August 5, 1924, $117.56; October 30, 1924, $12,500.00; November 3, 1924, $5,100.00; November 10, 1924, $200.00; November 29, 1924, $15,069.99; December 13, 1924, $12,016.00; February 5, 1925, $10,200.00; February 18, 1925, $15,210.00; April 7, 1925, $12,162.66; April 7, 1925, $80.00; May 12, 1925, $4,056.00; June 6, 1925, $220.00; June 11, 1925, $66.67; July 7, 1925, $12,072.00—making a total of $143,286.68.

1245 That aggregate total represents payments made by G. W. Peckham from his personal account with the bank upon his personal indebtedness, from January 1, 1923 to November 17, 1925. November 17, 1925, $1,007.23; February 13, 1926, $550.00; May 15, 1926, $550.00; August 10, 1926, $550.00; September 30, 1926, $503.10; November 12, 1926, $3,050.00; January 19, 1927, $2,506.12; March 16, 1927, $1,500.00; April 23, 1927, $10,963.75; August 23, 1927, $350.00; October 19, 1927, $520.00; February 15, 1928, $513.33; July 20, 1928,

$493.78; September 27, 1928, $3,163.78; December 4, 1928, $614.50; January 12, 1929, $2,013.33; May 11, 1929, $373.76; June 24, 1929, $20,214.44; August 24, 1929, $381.09; September 2, 1929, $5,000.00; October 25, 1929, $3,061.00—making a total from November 17, 1925 to October 25, 1929, of $57,879.21. Those two totals aggregate $201,165.89, and they are all reflected as charges against the deposit account of G. W. Peckham which is in evidence, and credits upon the liability account of G. W. Peckham, which is in evidence. In addition to those, Mr. Peckham paid to the bank upon other items which he was personally liable, different sums of money during this period of time from his personal account. On November 1, 1928, he paid $4,200.00 and that was credited to the account of Reverend J. M. Sweeton, that was for a note held by Reverend Sweeton, signed by Mr. Peckham. On 5-2-28 he paid a note and interest to Reverend Sweeton, $1,230.00. This Sweeton note in no way had any connection with the City National Bank, it
1246 was an item for collection. On March 18, 1924, G. W. Peckham paid to the City National Bank for W. H. Peckham's note $10,026.75; On February 24, 1925, he paid $6,010.67 on a note for Tolowa; on April 19, 1923, he paid on a note to the City National Bank, $889.66, that was on principal and interest on a note that was previously charged off. Mr. G. W. Peckham was the maker of the charged off note. On February 21, 1924, G. W. Peckham paid on a note of Griswold Oil Corporation, $3,000.00. On June 11, 1924, he paid off $5,000.00 that had been previously charged off. I have included in my aggregate total the payment he made to the Griswold Oil Company, $21,927.80. Regarding the Griswold note, I think in checking the record that that item, it was marked on the sheet and says, "Griswold note," and I really think that that was the balance due, I mean that was a payment on the charged off note, and the boys in handling the note in the department made a mistake in writing it up as the Griswold note. That is my personal opinion of it. As far as he

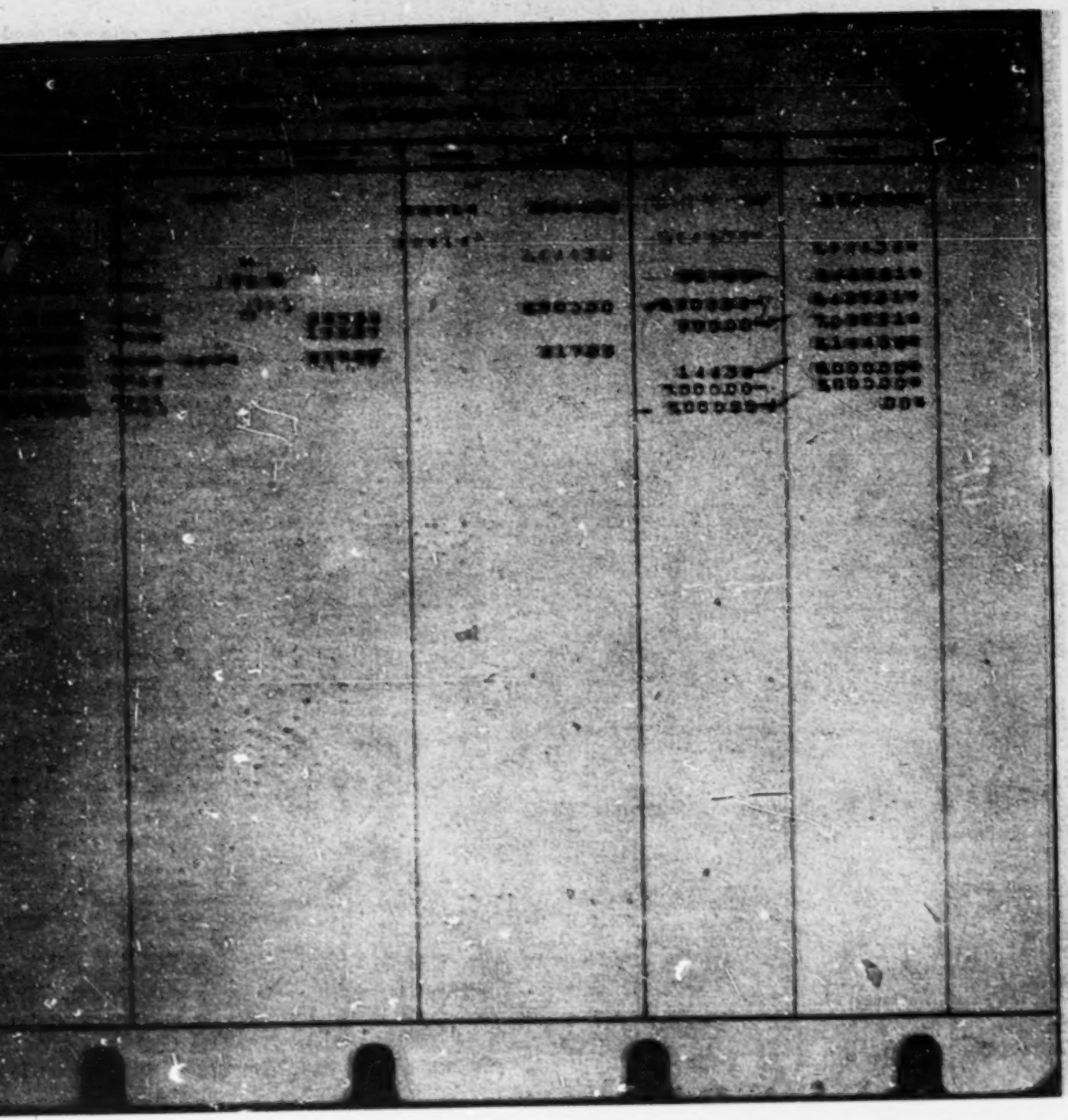
being indorser on the note, we have no record to show that he was; so the best I can check that, it was his personal indebtedness. I could not say whether Mr. Peckham was an indorser on the Tolowa note or not, the records do not reflect. He could have been without the records reflecting.

The check dated December 18, 1923, for $632.27, of George Peckham's, payable to the bank's order, was paid on Mr. Peckham's charged off note. I could
1247 not tell you what disposition the bank made of the check for $25.00, dated June 30, 1925, they did not necessarily get the money, they could have paid out cash on it. I have the liability records showing what I refer to as the charged off liability account of Mr. Peckham.

Mr. Rogers:

We wish to offer it in evidence.

(Marked "Defendant's Exhibit 131" as follows:)



1249 The Witness:

Mr. Peckham's deposit to his personal account during his trusteeship totaled $1,608,999.13, and there was a total of checks drawn against the trust account and deposited to Mr. Peckham's personal account of $253,418.41, which is almost fourteen percent of the aggregate total deposit to his account during that period, that is funds transferred from his trust.

I have available the books and records of the bank, the Marlborough Partnership, the Texas Investment Company, and G. W. Peckham's canceled checks and bank statements, with the bank, with some exceptions, and the books and records of the royalty company during the trusteeship of G. W. Peckham. I will give you the amount G. W. Peckham paid in his original purchase, and subsequent improvements, on the Marlborough Addition, to the grantor or other persons for the account of that partnership, or its successor; December 2, 1925, $250.00; February 12, 1926, $150.00; April 15, 1926, $7,500.00; May 20, 1926, $2,000.00; June 2, 1926, $1,500.00; June 7, 1926, $1,000.00; June 19, 1926, $4,500.00; 7-1-26, $400.00; 7-23-26, $1,000.00; September 19, 1925, $7,738.50; January 8, 1926, $909.00; December 12, 1926, $7,738.50. The checks for the above items are in evidence, and total $34,686.00, and is the total amount that G. W. Peckham paid from his personal account with the plaintiff bank upon that venture. I will give the same information in respect to J. T. Harrell, December 2, 1925, $250.00; February 12, 1926, $150.00; May 10, 1926, $3,750.00;

1250 May 19, 1926, $2,000.00; June 3, 1926, $3,000.00; September 19, 1925, $3,869.25; January 8, 1926, $454.50; October 14, 1926, $3,869.25—a total of $17,343.00. On this item of G. W. Peckham, payable to the Marlborough Addition, I testified as of September 19, 1925, of $7,738.50, Mr. Peckham paid out of his personal account $3,869.25, and W. H. Peckham paid the same amount. That would make his total personal outlay $42,628.60.

The partners, in the purchase and improvement or otherwise of the firm assets of the Marlborough prior to March 1, 1926, expended in cash, $18,995.00. They had incurred liability in excess of $50,000.00 in the original purchase of the property—the deeds are in evidence and disclose accurately the amount of it. There were four partners prior to March 1, 1926, and if they each contributed their pro rata part of the payments, had spent one-fourth of $18,895.00, that would be $4723.75.

In March, 1926, G. W. Peckham obtained a deed from his brother, W. H. Peckham to one quarter interest in the venture, and gave his check for $11,811.85. W. H. Peckham was never out any money on that venture, but I do not know how much profit he made, because I do not know anything about his business, all I know is what the books show. I am testifying from the Marlborough books, and from my investigation, it is my opinion that the books correctly reflect the contribution of each partner to that venture.

Trust check No. 478 for $17,623.70 was deposited to George Peckham's account in the City National
1251 Bank; trust check No. 479 for $6,000.00 was handled by the Security National Bank.

The trust books show that on March 6, 1926, the royalty company issued its two checks totaling $23,623.00 for a half interest in the Marlborough Addition. I do not know what a half interest in the Marlborough Addition cost the partners. I know what they spent, according to the books of the Marlborough Addition, each one of them, $4,723.75. Mr. Harrell and Mr. Kemp had to spend $4,223.75 each, and the Peckham brothers the same amount. The difference between what the two Peckham brothers had spent and what G. W. Peckham caused his trust to issue its check for, for such interest, is $15,175.20.

On the first day of March, G. W. Peckham owed the plaintiff bank $28,050.00, which I imagine included interest. On March 1, 1926, the City National Bank loaned the Wichita Royalty Company $25,000.00 and charged

their liability account with $25,500.00, being the principal and interest. The deposit for that amount is written in the handwriting of J. T. Harrell. G. W. Peckham's personal balance in the bank on that day was $341.90, and that is the day, March 1, that G. W. Peckham issued his personal check to W. H. Peckham for $11,811.85. There was an opening balance on March 1, of $341.90. On that day G. W. Peckham's account was insufficient to clear the $11,000.00 item. His closing balance that day was $566.90, on March 1 his account decreased $225.20. That was the beginning balance of March 6, 1926, and also the closing balance on the fourth. That is
1252 is the day he deposited his check No. 478 to that account, of $17,623.70. Before W. H. Peckham presented his check and it was paid on March 9, since March 1, and included that day, G. W. Peckham had total checks charged against his account of $5,989.50, made up of several items; one of them for $5,060.00 was payable to the order of J. T. Harrell and C. E. Basham, balance payment on Stephens Royalty.

At the time W. H. Peckham deposited this eleven thousand and some odd dollar check to his account, his balance, March 6, was $518.52. At that time he owed the bank $6,120.00, which he paid on March 9. $6,101.45 of that amount was proceeds of this eleven thousand and some odd dollar check which Peckham gave him upon his account. In other words, charging G. W. Peckham's account with all checks cleared against it prior to the clearing of the eleven thousand and some odd dollar check, that reduced his balance below $17,623.70, so that the eleven thousand dollar check was necessarily paid out of the proceeds of the seventeen thousand and some odd dollar check. The same is true with reference to W. H. Peckham paying the bank on the 9th, his personal liability, but of course the bank did not ask him where he got the $6,101.45. Mr. Harrell handled this transaction for the bank. G. W. Peckham gave J. T. Harrell and C. E. Basham a check for $5,060.00 in payment of the Stephens Royalty and $4,844.80 of that

was out of this transfer, $17,623.70—not out of the transfer, but out of the old deposit, I should say.

In a great number of cases I did tell Mr.
1253 Humphrey, while I was testifying, that the moneys were used for the purposes shown by the voucher notations. I said this was to apply on purchase of one-half interest in the Marlborough Addition and the deed so recited that it was. Mr. Harrell and Mr. Basham were paid by G. W. Peckham out of his account, $5,087.00, the check was dated March 31 and paid April 1, 1926. On March 31, the $7,500.00 deposit was made to G. W. Peckham's account, as the proceeds of the Wichita Royalty Company check; that deposit made G. W. Peckham's then balance $8,003.98; the next day he issued three checks, one for $500.00, one for $200.00, and the third to J. T. Harrell and C. E. Basham for $5,087.00. That March 31, $7,500.00 deposit was shown upon the trust books to be applied upon the Marlborough Improvements. On April 15, 1926, G. W. Peckham paid to the Marlborough Addition account $7,500.00, out of his private account, however, he had other accounts than in the City National Bank. He made the next payment to the Marlborough May 20, 1926, $2,-000.00. After the March 31 deposit of $7,500.00, he checked against it until prior to May 20, he reduced it to a minimum of $248.09. His account got down to $202.64 at one time, after the $7,500.00 deposit, it got down to that on May 8, 1926, on May 4, it was down to $187.48. On May 15, 1926, Mr. Peckham paid upon indebtedness to the bank, $550.00. On August 10, he paid $550.00. The next check that the trust books show to have been issued with voucher notation to be applied upon Marlborough Addition was check No. 503
1254 for $3,000.00, which was deposited to the personal account of G. W. Peckham, May 20, 1926; that is the day G. W. Peckham paid from his personal account to the Marlborough Addition, $2,000.00. He made the next payment to the bank August 10, 1926. $550.00, and prior to this payment to the bank, he had

paid the Marlborough Addition another $1,000.00 on June 7. At the close of business June 4, his balance had been reduced to $10.18. On June 2, he made a payment to Marlborough of $1,500.00; then on June 2, 1926, the trust check 507 for $1,500.00 was deposited to his account, that was the same day he made that payment to the Marlborough for the same amount. It is true that with the exception of $10.18, he had checked out all these former deposits before his $1,000.00 payment on June 7. The next payment to the Marlborough Addition, personal payment, was on June 19, 1926, $4,500.00; the next payment was July 23, 1926, $1,000.00. Without going into detail, Mr. Peckham caused some $50,000.00 worth of checks to be shown upon his books to have been applied to the purchase and improvement of Marlborough Addition, I would not say whether most of those checks were payable to the drawee bank or not, without seeing the checks, there have been so many I don't remember off-hand, most of them were, but some of them were not. Part of them were deposited to his personal account with the bank, that $6,00.00 check was not; then there are two checks in here issued after his death that were not deposited to his account. Those that were issued by G. W. Peckham during his
1255 lifetime, other than the $6,000.00, cleared through the Security National Bank, were deposited to his personal account with the bank. He also checked upon his personal account for various purposes and made individual deposits as well. Sometimes he did not remit to the Marlborough Addition as such, nor make payments in the amount and at the time that he received funds out of the trust account. On this $3,000.00 deposit that he made, on the same day he paid $2,000.00 to the Marlborough Account, and on June 2, he made a deposit of $1,500.00 and on the same day he paid that amount to the Marlborough and he paid another $1,000.00 on June 7; of course, the balance had been reduced to $10.18, on June 4, he made a deposit on June 5. He transferred, in payment to the Marl-

borough Addition, two thousand dollars of the three thousand dollars, to the Marlborough Addition.

I will refer to trust checks as follows: No. 495, March 23, 1926, for $300.00; No. 506, May 29, 1926, for $500.00; No. 521, July 16, 1926 for $300.00; No. 531, August 27, 1926, for $500.00; No. 540, October 13, 1926, for $300.00; No. 569, January 11, 1927, for $300.00; No. 599, April 14, 1927, for $300.00; No. 615, June 8, 1927, for $500.00; No. 628, July 16, 1927, $1,500.00; No. 682, January 18, 1928, $2,000.00; No. 717, May 17, 1928; No. 721, June 1, 1928, $424.66; No. 733, July 23, 1928, $220.00; No. 752, September 27, 1928, $424.66; No. 768, December 4, 1928, $2,000.00;
1256 No. 791, February 19, 1929, $1,500.00; No. 814, June 7, 1929, $1,500.00; No. 824, July 15, 1929, $212.49; No. 836, August 30, 1929, $1,000.00; No. 856, November 26, 1929, $1,500.00; No. 890, February 4, 1930, $1,000.00; No. 898, April 10, 1930, $1,000.00; No. 920, June 14, 1930, $1,500.00; No. 930, July 14, 1930, $3,055.42.

Each of the above checks are identified, and were payable to the order of the plaintiff bank, drawn upon the Wichita Royalty Company's account with the bank, and credited by the bank upon the liability record of the Wichita Royalty Company as it appeared upon the records of the bank, except check No. 752, for $424.66, was deposited to his account, and he paid out of his personal account on that same day that amount on that note. That check was payable to the bank's order. The notation says, "Interest on notes held by the City National Bank." I do not find any other payments made by the Wichita Royalty Company out of his account direct to the bank and credited upon the liability record with the bank during the period of time from March 1, 1926 to date, other than those items I have called off. Those payments were made upon items of indebtedness arising on the 18th of January and on March 1, and renewals of indebtedness. If it should be determined that in whole or in part that original indebtedness was that of G. W. Peckham personally, nevertheless these items have been credited upon it, and the liability

records of the bank reflect the credits—it is not shown,, however, that it was G. W. Peckham's liability, it was a liability of the Wichita Royalty Company and so shows, stands in their name.

1257 I have the deed with reference to the Porter Ranch, I do not recall whether there was a contract prior to the time of its purchase and sale I have the file on the Porter Ranch, but I have not found the contract prior to this deed. I will undertake to find such contract, concerning the purchase and sale of the Porter Ranch. The first notation of any character in the books and records of the Wichita Royalty Company relating to the Porter Ranch, Property 83, was December 28, 1925; the check for $1,250.00, dated 12-28-25, was the first entry of any kind or character concerning the Porter Ranch on the books and records of the Wichita Royalty Company. Check No. 451, and the voucher notation made after its issuance, represents the first transaction on the Porter Ranch. That was some twenty-seven days after the deed to G. W. Peckham and others. To my knowledge, I do not know of any deed or other memorandum in writing signed by G. W. Peckham conveying any interest in the Porter Ranch to the Wichita Royalty Company, or conveying his holding an interest therein for the account of the Wichita Royalty Company, however, there could be and I would not know about it. Of course, I have not gone into the Wichita Royalty Company's office and dug around to see what I could find, all I have is what has been turned over to me for me to see in their office. They told me I could see whatever I asked for. They have kept nothing back that I have asked to see, except a list of the stockholders and the checks, dividend checks to the stock-

1258 holders. There is a number of checks charged to the account of Wichita Royalty Company in the City National Bank, that they did not let me see. I do not care to see them now.

From my experience in the City National Bank, I am familiar with the records that are made with respect

to a note receivable by the bank; the first entry made goes on the liability ledger of the bank, and the customer either receives the cash or a deposit slip for the amount of money he is entitled to from that note. We give him an individual liability ledger sheet, on that enter such renewal as are made, and such payments to which the item is entitled to credit, and finally upon its final payment, it clears off. Each of such individual liability ledger sheets shows a clearance and a balance every time an individual whose ledger account that is, no longer indebted to the bank. As to the note registry, the system we now use is, we carry a journal sheet along with the liability sheet; in other words, there is a large sheet goes in the machine and stays in there during the day as each man's sheet is posted it is also posted on the journal sheet. I think that system begun about 1928, and has been used since that time. We do not have a note record wherein all of our notes receivable are catalogued, just the journal sheet is all. Of course, the notices are made up day by day and the notes are made that we sent out to the customers. At any time and any day we can determine from our record who owes the notes receivable and the amounts.

1259 When the bank wants to borrow money from a Dallas bank, for instance, there are two methods that can be used, we can either re-discount and sell such note receivable to the bank and get the money on it, or we can hold the note up and put these notes up as collateral. If we put the notes up for collateral, there would be a copy of the notes made and held in our files, and it will show that it is collateral to bills receivable at such and such bank. If we rediscount the note or sell the note, it clears out of our records. In such event, we would credit the several liability sheets with the full amount and balance it off. In other words, for instance, if I have a note in the bank for $1,000.00 and I sell it to the Dallas Bank, I take that note out of the case and give your account credit for it, and the Dallas bank will own the note, we mark

it sold to such and such a place. Each individual liability ledger will show that this note sold to such bank, or whoever it was. If we borrow some money from the First National Bank in Dallas, we would give them our bills receivable as collateral and we would have the original note—the note would go down, and we would have to sign a pledge agreement, pledging those notes as security and on that pledge agreement there would be a list of the notes we had pledged. Ordinarily we would keep a copy of the pledge agreement in our bank, and I am sure it would become a part of our permanent records. We usually keep a copy of the repurchase agreement, make it up in duplicate, showing we had agreed to repurchase.

1260 In respect to the $100,000.00 that was borrowed from the First National Bank and other moneys which the City National Bank of Wichita Falls borrowed, I can show you on the books where the notes went down, $100,000.00 on that particular day. I do not have the copy of the repurchase agreement, and do not know whether there was a repurchase agreement behind that $100,000.00 or not. I did not handle the deal myself. I know that there was $100,000.00 worth of notes out of the case. My records showed that the notes went down $100,000.00 on that day. That is on the general ledger, on the general books. The general books, every transaction after the close of the day's business, everything goes to the auditor, and it is set up on the general ledger of the bank, all transactions from all over the bank. I have here the loan and discount sheet out of the general ledger, shows December 31, 1931, the loans of the City National Bank went down $120,913.32. This is part of our permanent records, that is, in the City National Bank of Wichita Falls, shows the loans and discounts, this just carries the total. The individual liability sheets would show the items that made up that reduction. When a note is charged off it is charged to profit and loss, charged on the liability sheet—it is credited, I mean—on the liability sheet of

the individual that owes the money, and is taken out of the active files of the bank, provided that is all he owes the bank. It is put over in a separate record. I would have to go through all of the ledger sheets of the bank in order to show you what the $120,913.32 consisted of. That $100,000.00 is all the repurchase
1261 agreement that was outstanding on December 31, 1931. We owed rediscount for the Federal Reserve Bank of Dallas, $423,363.33, on that day; we owed bills receivable, $927,906.07, making a total of $1,451,269.40—which includes the $100,000.00. The total above given is the sum owed by the City National Bank of Wichita Falls. I am probably wrong about that, this $100,00.00 that was set up there did not show it was owed by the City National Bank, because these notes had been sold out of the bank. The bank records show that the bank owed on December 31, 1931, $1,451,269.40, in the following amounts, $100,00.00 at the First National Bank, which consisted of rediscount bills payable, repurchase agreements. That is the items which the directors of the bank and the other individuals borrowed from the First National Bank and put into the City National Bank and the records of the bank show that to be an obligation of the bank. You asked me several days ago to get up the whole thing, and that is what I am testifying to now, is the total; that includes the $100,000.00 at the First National Bank. In other words, if you want to know the bank, there would be $100,000.00 less in that total, because that $100,000.00 at the First National Bank is not an obligation of the City National Bank of Wichita Falls. I got this $1,100,000.00 from the books and records of this bank and the First National Bank here. It will take some time to get the outstanding obligation to the bank as of December 31, 1931,
the general ledger will show it, but the general
1262 ledger is set up in several different sections.

I have been testifying to some figures asked the other day which is not the same question you ask now. I have here the sheets out of the general ledger.

showing the bills payable as of December 31, 1931, the total owing of the bank at that time was $1,248,123.26, itemized it—bills payable, National City Bank, New York, $79,221.49; First National Bank, Wichita Falls, $50,000.00; Federal Reserve Bank, Dallas, $410,000.00; First National Bank in Dallas, $100,000.00; First National Bank, St. Louis, Missouri, $108,576.90, making a total of $747,798.39; rediscounts with Federal Reserve Bank, $500,324.87, making a grand total of $1,248,123.26.

Here is the ledger sheets, the First National Bank of Wichita Falls, October 10, 1931, the City National Bank, with the First National Bank of Wichita Falls, borrowed $150,000.00. The obligation of the City National Bank, they paid $100,000.00 on December 31, 1931, to the First National Bank in Wichita Falls. That is the day the directors bought some notes from the City National Bank. The memorandum, "trans" written after October 10, 1931, means it was a transfer. That means it was transferred from another sheet. I can explain it, he carried several different accounts along, and he would transfer them to the individual sheets—that is the bookkeeper, several different banks that had owed bills payable and set up bills payable all on one sheet, and he got so many that he transferred them to an individual sheet, that is where the word "transfer" comes
1263 in. The records show that the City National Bank paid the First National Bank of Wichita Falls, $100,000.00 on December 31, and reduced its liability to that bank to $50,000.00—I will describe the transactions between those banks as reflected; April 13, 1932, they borrowed $75,000.00, making a total of $125,000.00 they owed; on October 4, 1932, they paid $10,000.88, reducing the bills payable to $114,999.12; November 2, they paid $4,999.12, reducing the bills payable to $110,000.00; On November 29, they paid $9,923.39, reducing the bills payable to $100,076.61. On February 21, they paid $76.61, reducing it to even $100,000.00. On March 14, 1933, they borrowed $25,000.00, making a total owing of $125,000.00; On May 5, 1933, they paid $116,185.06, re-

ducing the bills payable to $8,814.94; on May 10, they paid $3,576.53, and borrowed $3,025.10, making a total of $8,263.51; On May 16, 1933, they paid $8,263.51, which closed out the bills payable at the First National Bank of Wichita Falls. Those items, beginning with the $150,000.00, the notes were indorsed, which was the only security, none of that was under the repurchase agreement. That shows the notes payable by the City National Bank to the First National Bank, Wichita Falls during that time. The repurchase agreements were not in addition to that, with the First National Bank—a part of these payments on this bills payable was a repurchase agreement that we gave them. After they gave us our bills payable credit for that and took this repurchase
1264 agreement into account instead of bills payable. So that some of the credits upon this sheet arises by reason of the City National Bank executing the repurchase agreement. The items covered by the repurchase agreement are in evidence, showing the items which the bank has repurchased.

I will hand to the commissioner the pledge agreement or repurchase agreements which were made and entered into by and between the two banks, First National Bank and City National Bank of Wichita Falls.

Mr. Rogers:

We offer those in evidence, "Defendant's Exhibit No. 132")

PARTIES OF THE FIRST PART.

FIRST NATIONAL BANK IN ELECTRA FALLS, TEXAS

BY _____ PRESIDENT.

Party OF THE SECOND PART.

D.E1132

11/45

1117

REPURCHASE AGREEMENT.

WICHITA FALLS, TEXAS

NOVEMBER 17, [illegible]

THIS AGREEMENT, entered into by and between the parties hereinafter called Parties of the First Part, and the FIRST NATIONAL BANK of Wichita Falls, Texas, Party of the Second Part:

WITNESSETH: That the Parties of the First Part have this day sold and delivered to the Party of the Second Part, for a consideration of NINE THOUSAND, [illegible] TWENTY-THREE AND 89/100 . . DOLLARS ($9,023.89), certain [illegible] Vouchers, as follows:

Archer City Common School Dist. "Available" Fund Vouchers . $1,000.00

" "Maintenance" " " " . 1,000.00

[illegible] Co. School Dist.-State and County Vouchers . . . 1,525.00

Wichita Falls Ind. School Dist. Vouchers - $576.00
481.27 [illegible]

Wichita County Common School Dist. Vouchers -
Various Districts . . . . . [illegible]

The Parties of the First Part hereto agree to repurchase on or before JANUARY 15th, 1938, and the Party of the Second Part agrees to sell the above described vouchers for a consideration of $9,023.89, together with accrued interest on the last mentioned amount at the rate of 6 per annum from this date until the date of repurchase.

THE LANGFORD INVESTMENT CO.
TRUSTEE FOR P.P.LANGFORD'S CHILDREN
By O. O. Langford
President.

PARTIES OF THE FIRST PART.

THE FIRST [illegible] OF WICHITA FALLS

By [illegible]
PARTY OF THE SECOND PART.

The Parties of the First Part [illegible] purchase on or before August 1st, 1933, the above described notes and warrants and the Party of the Second Part agrees to sell the above described notes and warrants, or any part or parcel of said promissory notes, for the consideration of $116,736.49, which amount is to be paid in cash upon the delivery of the above named, together with accrued interest on the amount to be paid under this repurchase agreement at the rate of six per cent per annum from this date until the date of repurchase.

It is understood, however, that the amount to be repaid is to be credited with any amount actually paid on the principal of the notes or warrants above described upon the date of the receipt of such payments, and that the Parties of the First Part shall be entitled to a credit upon the total amount of said repurchase agreement for the amount of such payments that may be received, plus six per cent per annum from the date of the payment until the date of repurchase.

This obligation shall bear interest at the rate of six per cent per annum from the date hereof.

PARTIES OF THE FIRST PART.

THE FIRST NATIONAL BANK OF WICHITA FALLS, TEXAS

By _____ President.

PARTY OF THE SECOND PART.

1270 The Witness:

I do not know whether the $100,000.00 credit on the liability to the First National Bank was paid in cash or by repurchase agreement. I am of the opinion it was paid by check or draft, I would have to look it up to see, but it is not a repurchase agreement. I will have to look through all the drafts and see what we have.

As to the method used in paying the First National Bank of Wichita Falls, $100,000.00 on December 31, the records reflect that that was a debit and credit; in other words, the $100,000.00 that the directors signed, these notes were taken into the account of the First National Bank and credited on the obligation of the City National Bank. It is true that the directors, did not, in fact, put any cash as such into the City National Bank, but paid a debt of the bank by executing their note at the First National Bank, in this manner, they all got, on the same day, a bunch of notes for that $100,000.00. I did not have anything to do with the transaction, Mr. Harrell is familiar with it. There is no mention of the item of December 31, 1931, in the minutes of the Board of Directors. The nearest meeting of the Board of Directors prior to that is December 1. There was a meeting the morning of December 31. Also a meeting on December 8, but it has no reference to this matter. I have a resolution here authorizing them to borrow money, dated October 12, 1931. There is an authorization in the minutes to sell the bank's assets in December, 1931, this is a general authority on October 12, 1931.

1271 From time to time the books and records of the bank were examined by a national bank examiner. Two examinations were ma[illegible] in 1931 and two in 1932. None were made in 1933 of the old bank. An examination was made on December 30, 1932, and closed February 1, 1933, by H. B. Gilbert. He has been a local bank examiner here for ten or twelve years. The chief national bank examiner is Mr. Collier of Dallas, his initials are R. H. When the bank examiner comes in to make an examination of the ban, he seals every-

thing up, the vaults, cash, all the books and records, and starts in by counting the cash and running the notes, cash items as they get through checking they are released, and the bank examiner goes into the loan and discount department and examines all the notes in there and balances the bond account, verifies the money in other banks, it is just a general audit. He checks the value of the assets, and sometimes acquires the charging off of doubtful items. Inquires into whether or not there is sufficient cash reserve and cash on hand. Sometimes these examinations take a month, at the end of that examination, he makes a written report of his findings, and gets the directors to acknowledge in writing, a receipt of the copy of the report. Then he keeps a copy for himself and sends another copy to Washington, is my understanding. The signed copy is kept by the bank. Mr. Gilbert is competent, qualified examiner.

I have here the discount committee minutes for 1926 and subsequent years are available.

1272 I have already offered in evidence the action taken upon the $15,000.00 and $25,000.00 items, in 1926, as disclosed by the discount committee. From there on, there is no specific record of that item. I will show on the minutes of these sheets, all loans made and renewed on a certain, unless exceptions are noted below as unanimously approved. In going through here, there were no exceptions, therefore, it does not name those particular notes in there. Here is what happened. The note department would write up this stuff, they would come up ten days prior to their maturity, and they would be discussed and if they were not to be renewed would be an exception written on the sheet, and these sheets would come up in the note department, were on a blank piece of paper, and after these minutes were made they were destroyed. That was not a permanent record, it was just to go before the committee to show what had happened the day before and the notes would go up to be discussed to see whether they were going

to pass for them to be paid or what they were going to do with them.

The liability record of the Wichita Royalty Company shows the first renewal after March, 1926, of the Wichita Royalty Company's liability to the bank, is on April 23, the discount minutes show, the loans made and renewed yesterday in those paid, as well as partially paid, those maturing and not having attention and those maturing ten days hence were carefully gone over.

1273 The following approved loans were made April 22—that is the new loans. The next renewal was June 2, and a similar notation in the minutes. That same thing is true with respect to G. W. Peckham's obligation. Nowhere in the minutes does this particular item show it, and the record I had made up at that time was temporary and it has been destroyed.

I suppose the last day the City National Bank of Wichita Falls did business as a going bank was on March the first. There is a report here as of that date. The total cash and exchange on hand was $284,825.75, that is cash on hand, transit items, clearing cash in bank, cash reserve in Federal Reserve Bank, the part that represents the deposit with the Federal Reserve Bank is $109,414.26. The total liabilities on that day were $6,738,180.39. I have before me the financial statement of the City National Bank of Wichita Falls.

Mr. Rogers:

We offer it in evidence.

DEFENDANT'S EXHIBIT 133.

DEFENDANT EXHIBIT 133

CITY NATIONAL BANK

WICHITA FALLS, TEXAS

DAILY FINANCIAL STATEMENT

DATE

CASH & SIGHT EXCHANGE

Federal Reserve Bank,	Dallas	$3,341,426
5% Redemption Fund		50,000.00
		$103,414,267

BANKS, BANKERS & TRUST COMPANIES

First National	Amarillo	1,498,429
Cont. Ill. Bk. & Tr. Co.	Chicago	69,793
First Natl. in Dallas	Dallas	13,490,085
Ft. Worth National	Ft. Worth	13,487,222
First National	Houston	155,429
Fid. Nat. Bk. & Tr. Co.	K. City	94,427
National City,	New York	3,242,853
1st Natl. Bk. & Tr. Co.	Okl. City	4,447,832
First National	St. Louis	1,922,029
Exchange National	Tulsa	1,045,447
Fourth National	Wichita	42,529
		42,990,586

TRANSIT ITEMS

Transit Account	2,299,546
F. R. Clearings	18,014,422
Country Bank Overdrafts	1,031,164
Customers Checks Not Charged And Other Cash Items	46,092,299
CASH IN VAULTS	38,491,451
	132,509,881

TOTAL CASH & EXCHANGE $284,825,734

LOANS & DISCOUNTS

Bills Receivable	$497,261,811
Call Loans	
Bills of Exchange	
Trade Acceptances	
	$497,261,811

INVESTMENTS

U. S. Bonds Direct Obligations	$ 80,000,000
U. S. Liberty Bonds	90,250,000
Other Bonds and Stocks	75,341,747
Bonds Secure Postal Savings	187,000,000
Federal Reserve Bank Stock	5,000,000
Bank Building	30,000,000
Furniture and Fixtures	2,000,000
Other Real Estate	3,439,941
Banking	
Claims, Warrants, etc.	2,268,948
Other Assets	2,282,432
Customer's Bonds	86,000,000
Travelers Checks	4,291,080
TOTAL RESOURCES	$ 1,018,481,709

DEPOSITS

Individual	$ 1,[illegible]
Demand Certs. of	[illegible]
Cashiers Checks	[illegible]
Certified Checks	[illegible]
Expense Checks	[illegible]
Dividend Checks Outstanding	[illegible]
Banks, Bankers and Trust Co.	[illegible]
Due Federal Reserve, Dallas,	[illegible]
Letters of Credit	
Transit Account	[illegible]
City Bank Overdrafts	
TOTAL DEMAND DEPOSITS	$ [illegible]
Time Certs. of,	[illegible]
Savings Accounts	[illegible]
Postal Savings	[illegible]
TOTAL TIME DEPOSITS	[illegible]
TOTAL DEPOSITS	[illegible]
CAPITAL STOCK	[illegible]
SURPLUS	
UNDIVIDED PROFITS	
Reserved for Taxes, Accrued	
Reserved for Interest, Accrued	
Rediscounts Federal Reserve	$ 267,000,000
Bills Payable	[illegible]
Circulation,	1,000,000,000
Customers' Bonds	[illegible]
Travelers Checks	[illegible]
Other Liabilities	[illegible]
TOTAL LIABILITIES	[illegible]

GROSS EARNINGS:

Interest & Discount,	[illegible]
Exchange	[illegible]
Other Earnings,	[illegible]
Recoveries on charged-off Assets	[illegible]
	$1,490,784

EXPENSES PAID:

Salaries & Wages	[illegible]
Int. & Dis. on Borrowed Money	[illegible]
Interest on Deposits	[illegible]
Taxes,	[illegible]
Other Expenses	[illegible]
	[illegible]

LOSSES CHARGED OFF:

Loans and Discounts,	[illegible]
Other Losses,	[illegible]
	[illegible]
	[illegible]
DEFICIT	[illegible]
ADD to UNDIVIDED PROFITS	[illegible]
Treasury's Deposits	[illegible]
Loan Fds.	[illegible]
Today's Earnings	[illegible]
Interest Expense	

1123

1275 (Whereupon the witness was excused from further cross examination by the Defendant Wichita Royalty Company, until a later date)

E. E. SCANNELL, Recalled for further cross examination by Mr. Boone, testified as follows:

I have already testified that the properties owned by the Wichita Royalty Company were listed from one up to around one hundred. I think I testified the first property bought from George Peckham was the Grimshaw No. 71, but I was a little confused on that. I want to make this explanation. While George Peckham became the trustee officially on the first of January, or the second of January, 1923, as I remember it, there was some period in there in which Ross Robertson continued to act as trustee on matters of getting the thing straightened out and getting it operating under the new trustee. There was some property purchase in there along about that time. While the deeds show that they might have come from George Peckham and B. L. Fain, and Bill Peckham who were partners at the time and who were selling various royalty companies around here, it is a little difficult for me to tell whether it was bought by Ross Robertson, or whether it was bought by George Peckham—I cannot tell you because I do not
1276 have all of those details closely enough to be able to tell you where it did begin.

Our records show here that on payment of the Novotny and See in Kay and Noble County, Oklahoma, our No. 64, 65, and 66, shows that our first check was given on this property on the 29th of January for $3,510.00, that was in 1923. That the second check was February 13, 1923, for $4,500.00, and the third check, No. 1,263, on the 13th of March, 1923, for $4,075.50, making a total cost of $12,085.50. That property was bought after George Peckham became trustee, according to the first check and voucher number, whether there was a prior contract in existence for that royalty, I could not be sure. Here

is the data pertaining to that property. The notation on voucher No. 1,209 January 29, 1923 is "To apply on last payment of royalty interest No. 64, 65, 66, Tonkowa field, $3,510.00. I imagine the information on that voucher came from George Peckham. I signed the check, for the trustee.

Voucher No. 1,232, February 13, 1923, for $4,530.00, payable to B. L. Fain, the voucher reads, "to apply on last payment royalty interest, 64, 65, 66, to Novotny and See lease, and Tonkowa pool, principal $4,500.00, interest $30.00, total $4,530.00." I believe that information came from George Peckham, I signed the check for the trustee, it is indorsed "deposit to the account of B. L. Fain." I could not tell you who wrote that indorsement, I do not recognize the handwriting, it is not mine. It was paid on February 19, 1923.

1277 Voucher No. 1,263, dated March 13, 1923, in the sum of $4,129.84, payable to the City National Bank, reads, "To apply on last payment royalty interest No. 64, 65, and 66, in Novotny and See, Tonkowa pool, $4,075.50, interest $54.34, total $4,129.84." I signed the check for the trustee, it is indorsed "Credit account of B. L. Fain," and some initials on it. I know T. A. Keys, he used to be in the City National Bank. I could not tell you whether that is his signature or not. We obtained a conveyance from E. B. Chapman for that property dated February 15, 1923. There are three separate conveyances. This, likewise, is dated the 15th of January, 1923, from E. B. Chapman, the third conveyance dated January 15, 1923, signed E. B. Chapman. This property is not producing, the Novotny land has been out of production for some several years, and the See probably produces a few cents a month. I have not checked the total revenues from this property, but will be glad to do so.

The numbers as to these properties skipped around a good deal, probably the instructions were received, or otherwise they would not have skipped them. I received instructions from either Mr. Robertson or Mr.

Peckham, whoever it happened to be that was handling the executive end. No. 63 is a part of the Hattie Vaughan and likewise covers No. 60, 61, 62, and 63. That was due to the fact that there were four producing leases, it is divided into four different leases, each of them had a number. The first check issued on that was
1278 November 17, 1922. There were three different purchases in the Hattie Vaughan—it might have been the first buy. It was dated October 14, 1922, the numbers are 42, 43, 47 and 48. None of these were bought during Mr. Peckham's regime. I have one conveyance from Hattie Vaughan here on January 10, 1923. That is like I tried to explain to you, that that property, the deed was not executed on that until after the last payment was made, or it was the last payment that was made, or something of that nature. $15,000.00 was paid for the property acquired on January 10, 1923. The indications from the checks were that we purchased it somewhere about November 17, 1922, and that the final payment was made January 13, 1923, and the deed was dated from F. N. Jondahl to George Peckham as trustee of the Wichita Royalty Company on January 10, 1923. and it was a 1/32nd interest in the southwest quarter of Section 33, township 16, range 9 in Creek County, Oklahoma. The record also shows a memorandum I made for my own information that this property was sold by G. W. Peckham to Harry White, 2-1-28, for $6,000.00, which originally cost $15,000.00. This is the Hattie Vaughan, of which there is quite a bit in the record about. The deed I have on it, comes from F. M. Jondahl, banker at Bristow. Peckham and Fain purchased the properties, the contract escrow in the bank, and then sold out parcels of it. That is the Hattie Vaugha, which is 1/32nd. I do not think that $15,000.00 was all they paid for all of it. According to the check, I added
1279 them up just now, unless I made an error. The two Peckham boys and Fain were partners in trading and they sold a number of royalties and others around in town and they would go out and buy a piece

of property, probably buy an eighth interest, maybe as much as they had, maybe it was a part of it, and then they would come back and sell this company some of it and sell some to another and some to another, that is what I mean by that information. This property acquired on January 10, 1923, it was bought at the same time with all this Hattie Vaughan stuff, I think, rather, that is my recollection about it. In the whole deal these three purchases is 34, 30, 40, 41, 42, 43, 47, 48, 60, 61, 62, and 63. The indicates are that the first purchase was made on the first section of it in August, 1922. The next section was purchased in October, and the next in November, as I remember it.

Voucher No. 1,185 says, "To apply on last payment royalty No. 60, Hattie Vaughan, payment $3,750.00, interest $62.50, total $3,812.50." The check was made payable to B. L. Fain.

Check No. 1,190, dated January 13, 1923, the voucher reads, "To apply on last payment royalty interest No. 60, Hattie Vaughan tract, payment $3,750.00, interest $62.50, total $3,812.50." That information possibly came from Mr. Robertson or Mr. Peckham. I now turn to 1,185. It says, "To apply on last payment." Check No. 1,163, dated December 22, 1922, the voucher reads, "To apply on last payment of royalty interest No. 60, Hattie Vaughan, payment $3,750.00, interest $31.25, total $3,781.25."

Check No. 1,100, dated November 17, 1922,
1280 reads, "First payment on royalty interest No. 60, Hattie Vaughan Tract, Creek County, Oklahoma, $3,750.00." That was charged to No. 60.

The notation I have on this property, the deed came from Jondahl, the banker at Bristow, Peckham and Fain purchased the property on a contract escrow in the bank and then sold and parceled that out. No reference to that on the Wichita Royalty Company records, that is their personal business, and it is just a memorandum I made for my own information, since I begun digging into this matter. I will have to say that I can-

not say positively there was any contract on this, but that is my recollection. I knew in November and December, 1922, and January, 1923, that Mr. Peckham and Mr. Fain were going out and buying properties and parceling them out and selling them. This property was producing, I think we checked it up, and it ran up to the date of sale, $26,269.92, sold February 1, 1928. The sale entered on our books was $5,700.00. We never got anything for it, George Peckham got it. The indications are that he got it when this cashier's check was cashed, which was February 10, 1928. That is one of the items we are suing for. This is a photostatic copy of a cashier's check payable to W. C. Duncan, dated February 6, 1928, being Plaintiff's Exhibit 146. There were two of those sales, $5,700.00 each, one on Wilson and one on Hattie Vaughan. Our books do not show we got anything. George Peckham sold it, the deed was executed by him for the Royalty Company. I do not have the copy of the deed. I am under the
1281 impression that he told us when we drew the deed who to have it drawn to. As I recall, we entered up the sale at the price of $5,700.00. This happens to be in the handwriting of the boy that was bookkeeper that we had to do this work. We made the entry on May 1 for Wilson Royalty, J. E. 24, $5,700.00; May 1, Hattie Vaughan interest, J. E. 25, $5,700.00. This is the journal. Entry made in 1928. I knew in May, 1928, that he had sold that property for $5,700.00. I could not say that I ever asked George Peckham about the money, he was the boss and I was just an employee. This is one of the items I filed against his estate, in the original $19,000.00. I knew in 1928 that the property had been sold for $5,700.00. I don't know that I found out that George Peckham got this money until after we checked through the records, after he died, I couldn't tell you just how long. We begun to check up different items, and this was among them, that we had never received any money for. In 1930, I presented a claim to the administrator for $5,500.00. The original jour-

nal entry book has been misplaced somewhere, however, it is recorded in the ledger.

Another piece of property bought after George Peckham became trustee, is the Lumzy-Deer, our property No. 69. I don't think there was any other property prior to No. 60.

As to the $5,700.00 on the Hattie Vaughan, it seems to me when we made that claim, filed it, that we transferred it to the accounts receivable. We had it on the notes receivable account, and on June
1282 1, 1928, it was debited to the notes payable account, our journal entry No. 18, amount $11,400.00—that is notes payable account City National Bank Wichita Falls, Texas. I imagine Mr. Peckham instructed us to do that. The journal entry on that is in the book that is missing, journal entry No. 18. I do not know where journal entries Nos. 126, 127, 128, and 129 are, that is in the book that is gone. I am of the opinion that there is no such journal entries as those. I am sure I have seen the book since George Peckham died. I don't think I have had that book in my possession since this case started, the first thing when we came up here, we went to hunt for it, and I couldn't find it. I told Mr. Carson some time before that that I had misplaced it somewhere and could not locate it. There is only one ledger that is lost, I think Mr. Carson did not return it to us, because here is a photostatic copy of it, and we haven't seen it since. This photostatic copy covers the same period, I know we had all those ledgers up there when we were working on these books, and after it was photostated, I never saw it again. That book begins June 1, 1929. I have the record between May, 1928 and the time George Peckham died, this is the ledger, the journal entry book is the one I am telling you about that is missing. That is a photostatic copy of the ledger. I have in my possession the ledger from May, 1928, to 1929, but not the journal entries, this shows the journal entries in the books, debits and credits, both sides. Here is the credit side, and here is the debits, from page

to page. On one page here, June 1, 1928, for
1283 sale of Wilson and Vaughan Royalties, Journal Entry No. 1, $11,400.00, and opposite that I have June 1, 1928, Journal entry 18, $11,400.00 as a credit. I could not tell you who wrote "Notes payable" there, it has been put there recently, I am sure. That is Mr. Lambert's notation. The only reason we write anything in there at all is for a ready reference in case we want to glance at it. The notes receivable, $11,400.00, for the sale of Wilson and Vaughan royalty—there were not any notes that we ever had, we understood there were some, but we did not get them. I got that information from Mr. Peckham, along about the time the deal was made. Journal entry No. 18 would not show that, probably just recorded transactions. Journal entry No. 1 is from the previous years. The note would not show in Journal entry No. 18, it shows there how we disbursed the entry, transferred it. I do not have any notes for this property, did not get any, to my knowledge. I don't remember whether I ever executed a note, personally to the company or not, but I don't think so, if there is one in the record and you will produce it, I can identify it. This journal entry No. 18 would not necessarily reflect whose note it was. We knew who the deal was made to. I have looked for the Journal entry everywhere and have not found it. Journal entry No. 26, 27, 28, and 29, would be in the same book.

It is my recollection that no other property less than No. 60 was purchased by the royalty company after George Peckham was selected as trustee.

1284 Property No. 54, is the Tillson-Geeson, 1/16th interest in the norhwest quarter in the northeast quarter of section 32, Township 16, North, Range 9 east. I think the purchase price of that is in three checks, totaling $3,675.00. I think the conveyance must have been misplaced; it is a lease interest, overriding interest, I do not seem to have it here right now. This is the conveyance which you now hand me. The conveyance is dated the 16th of January, 1923, the first check, however,

is dated November 15, 1922, and the last check, No. 1,183, dated January 2, 1923. We did not get title to it until January 16, 1923, evidently B. L. Fain was holding it in trust for the company until that time. My recollection is we got nothing out of that property, I am quite sure it never produced any oil. I don't remember what we did with the lease, probably we charged it off, I will try to find it for you.

We made three purchases on the Ellis Holmes property, as I recall it, the first buy was No. 56, the first check given on it was November 20, 1922. We paid $75,000.00 out of money and oil, we gave checks on that property, $47,244.02. The next check is December 11, the next one December 20, 1922; the next one January 2, 1923; the next one January 8, 1923; the next one February 7, 1923; the next one September 29, 1923. I think there were other pieces of that property, and these checks recited cover those three pieces. Voucher No. 1,110, dated November 20, 1922, reads, "To apply on last payment of
1285 Royalty Interest No. 6, Section 34, Township 12, range 12, Okmulgee County, 80 acres operated by Black Oil Corporation." The amount of that check was $10,000.00. The next one, No. 1131, dated December 4, 1922, for $5,000.00 and says, "To apply on last payment of royalty interest in No. 56, Okmulgee County, $5,-000.00." The next check, December 11, 1922, No. 1,147 for $5,000.00, "to apply on last payment of royalty interest, 56, Okmulgee County, $5,000.00." The next check, No. 1,156, $5,000.00 dated December 20, 1922, says, "To apply on last payment royalty interest No. 56, Okmulgee County, $5,000.00. Check No. 1,176 is for $10,000.00, dated January 2, 1923, "To apply on last payment of royalty interest 56, Okmulgee County Royalty, $10,-000.00." Check No. 1,182, is dated January 8, 1923, and says, "To apply on contract last payment No. 56," and I have in pencil, "Ellis Holmes, Okmulgee County, $3,-332.12." Check No. 1,225, dated February 7, 1923, says, "To apply on last payment royalty interest 56, Okmulgee County, Oklahoma, $3,777.53." Check No. 74, September

29, 1923, says, "To apply on last payment Eagle Pitcher lease, Okmulgee County, Oklahoma." Mr. Black was the man from whom we purchased the interest, it seems to me like he was the original operator, and he sold to Eagle Pitcher and retained an overriding interest which we purchased. Nos. 101 and 102, November 14, 1923, being No. 101, "for purchase of oil lease on one-fourth royalty, Ellis Holmes tract, Okmulgee County, Oklahoma." This represents $2,818.94, principal, and eight percent
1286 interest from July 15, 1923, that is on the check, of $2,200.00, and check No. 102, dated the same day, reads the same way. Check No. 265, dated September 15, 1924, reads, "Final settlement of Ellis Holmes lease, south half of southwest quarter, thirty-four, twelve, twelve, 1/7th of 7/8ths working interest purchased from L. E. Black." I think we figured the production off of that particular interest was $27,642.70—I will supplement that by saying that does not include the money applied against oil payments, and nothing back of January 1, 1923, if there was anything, I think it went to October 31, 1933, when it quit producing. I think the runs have been withheld since that time. The property is still there as far as I know, I have never conveyed it, I think it is in the deed of trust to Guy Rogers and others, I don't know whether that property was sold under the mortgage or not, I will check it up.

The next property, No. 67, is the Ellis Holmes property, the deed is dated August 1, 1923, executed by W. H. Peckham before me as a notary public. $27,750.00 is the consideration. The first check was No. 1,216, dated February 3, 1923, for $4,000.00 and it reads, "First payment on purchase royalty interest north half, southwest quarter, section 34, 12-12." Payable to B. L. Fain. That is purchased from W. H. Peckham. My memory is that it was divided into three purchases, and there was one deed covering the whole entry. I found here the contract in typewriting. This check I just identified seems to be the first payment on No. 67. That is all the
1287 information I can give you. B. L. Fain is the seller and the Wichita Royalty Company is the

buyer. He paid for this property, $12,500.00, No. 67. I found that contract in the office files, since I started going into this matter, and it seems to tally with our records. On the back of the contract dated February 5, 1923, in bold letters written in pencil, "Royalty No. 67, purchased August 14, 1923," that is in the handwriting of the bookkeeper, my assistant.

Mr. Boone:

We offer the contract in evidence, Defendant's Exhibit 134.

DEFENDANT'S EXHIBIT 134.

State of Texas,
County of Wichita.

This Agreement entered into, by and between B. L. Fain hereinafter styled Party of the First Part, and Wichita Royalty Company, hereinafter styled Party of the Second Part.

Witnesseth:

Party of the first part agrees to sell and hereby does sell to Party of the Second Part for an agreed consideration of Twelve Thousand Five Hundred Dollars the following interest; 1/8 of the 1/8 fee royalty (which is equivalent to 1/64 of the total production), on the North 1/2 of the Southwest Quarter of Section 34, Township 12 North, Range 12 East, Okmulgee County, Oklahoma.

1288

Party of the Second Part agrees to pay to Party of the first Part for the above described interest the sum of Twelve Thousand Five Hundred Dollars as follows: Four Thousand Dollars cash receipt of which is hereby acknowledged: Four Thousand Dollars thirty days from date hereof: Fifteen Hundred Dollars Sixty days from date hereof: Fifteen Hundred Dollars ninety days from

date hereof: Fifteen Hundred Dollars one hundred and twenty days from date hereof. Deferred payments to bear interest at the rate of 8% per annum from date until paid.

It is further understood and agreed that all oil runs on the above described interest collected by Party of the First Part from December 7, 1922, shall be applied as credit to Party of the Second Part on the final payment recited above.

Party of the First Part agrees to execute proper conveyance covering above described interest to Party of the Second Part which conveyance shall be placed in escrow together with a copy of this contract in the City National Bank at Wichita Falls, Texas, to be held by said bank until full consideration set forth above has been paid; whereupon said bank is instructed to deliver said conveyance to Party of the Second Part.

Witness our hands this 5th day of February, 1923.

B. L. FAIN,
Party of the First Part.
WICHITA ROYALTY COMPANY,
By G. W. PECKHAM,
Party of the Second Part.

(On the back thereof in pencil) "Royalty #67, Paid Aug. 14, 1923."

1289 The Witness:

For No. 70, we paid $6,250.00. I hand you the copy of a contract between George Peckham and the Wichita Royalty Company dated March 5, 1923. I think that contract has been in my possession all the time, the same as the other contract of February 5. These contracts were not between G. W. Peckham and the royalty company, that is, W. H. Peckham.

Mr. Boone:
We offer it in evidence.

(Marked "Defendant's Exhibit 135" as follows:)

1290 DEFENDANT'S EXHIBIT 135.

State of Texas,
County of Wichita.

This Agreement entered into by, and between W. H. Peckham hereinafter styled Party of the First Part, and Wichita Royalty Company hereinafter styled Party of the Second Part.

Witnesseth:

Party of the First Part agrees to sell and hereby does sell to Party of the Second Part for an agreed consideration of $6250.00 the following described interest, to-wit:

1/8 of the fee royalty (which is equivalent to 1/64 of the total production) on the following described tract of land, to-wit: The North 1/2 of the Southwest Quarter of Section 34, Township 12 North, Range 12 East, Okmulgee County, Oklahoma.

Party of the Second Part agrees to buy and by these presents does buy the above described royalty interest for the sum of $6250.00 payable as follows: $2250.00 cash receipt of which is hereby acknowledged; $1000.00 due April 5, 1923; $1000.00 due May 5, 1923; $1000.00 June 5, 1923, and $1000.00 due July 5, 1923. Deferred payments to bear interest at the rate of 8% per annum from date until paid.

It is further agreed by both parties hereto that all oil run to the credit of the above described interest beginning at 7 A. M. on December 7 shall be credited to Party
of the Second Part upon final payment of the
1291 consideration mentioned above.

Party of the First Part agreed to execute proper conveyance in favor of Party of the Second Part covering above described interest which conveyance shall be placed together with a copy of this contract in escrow in the City National Bank of Wichita Falls, Texas, to be held by said bank until full consideration set forth above has been paid; whereupon said bank is authorized to turn over to Party of the Second Part said conveyance.

Witness our hands this 5th day of March, A. D. 1923.

W. H. PECKHAM,
Party of the First Part.
WICHITA ROYALTY COMPANY,
By G. W. PECKHAM,
Party of the Second Part.

(On the back in pencil) "Royalty No. 70, Purchase Paid Aug. 14, 1923."

The Witness:

I hand you another contract dated June 4, 1923, on the back of it has "Royalty No. 73" paid August 14, 1923." That contract was between B. L. Fain and Wichita Royalty Company, I have had it in my possession all the time. We paid $9,000.00 for property No. 73.

1292 Mr. Boone:

We offer this contract in evidence.

(Marked "Defendant's Exhibit 136" and reading as follows:)

DEFENDANT'S EXHIBIT 136.

State of Texas,
County of Wichita.

This Agreement entered into by, and between B. L. Fain hereinafter styled Party of the First Part, and

Wichita Royalty Company, hereinafter styled Party of the Second Part.

Witnesseth:

Party of the First Part agrees to sell and hereby does sell to Party of the Second Part for an agreed consideration of Nine Thousand Dollars the following interest: 9/40 of the 1/8 fee royalty (which is equivalent to 9/320 of the total production) on the North 1/2 of the Southwest Quarter of Section 34, Township 12 North, Range 12 East, Okmulgee County, Oklahoma.

Party of the Second Part agrees to pay to Party of the First Part for the above described interest the sum of Nine Thousand Dollars, as follows: $5000 cash receipt of which is hereby acknowledged, and $4000 four months from date of this contract. Deferred payment to bear interest at the rate of 8 per annum, from date until paid.

1293 It is further understood and agreed that all oil runs on the above described interest collected by Party of the First Part from December 7, 1922, shall be applied as credit to Party of the Second Part on the final payment recited above.

Party of the First Part agrees to execute proper conveyance covering above described interest to Party of the Second Part, which conveyance shall be placed in escrow together with a copy of this contract in the City National Bank at Wichita Falls, Texas, to be held by said bank until full consideration set forth above has been paid; whereupon said bank is instructed to deliver said conveyance to Party of the Second Part.

Witness our hands this 4th day of June, 1923.

B. L. FAIN,
Party of the First Part.

WICHITA ROYALTY COMPANY,
By G. W. PECKHAM,
Party of the Second Part.

(On the back in pencil) "Royalty #73, Paid Aug. 14, 1923."

The Witness:

This property is known as the Ellis Holmes property Nos. 67, 70 and 73, part of the Ellis Holmes farm. The file reflects we bought the property from B. L. Fain and W. H. Peckham, according to the contract. I will be glad to look and see whether or not I have the original contract. These checks I have given you all
1294 constituted the purchase price for these three tracts. No. 1,216 looks to be signed by B. L. Fain, I mean, indorsed, and signed by E. E. Scannell for trustee; 1,249 seems to be indorsed by B. L. Fain, 1,252 seems to be indorsed by B. L. Fain and under it W. H. Peckham. It does not look like B. L. Fain's signature. Those checks were all paid. The next two checks, April 2, 1923, both of them; one of them for $1,520.00 and one for $1,006.67, are payable to the City National Bank, each of them signed by E. E. Scannell for trustee. The voucher on these two checks, No. 1,281, dated April 10, 1923, the voucher reads, "To apply on last payment of royalty interest, No. 67, Ellis Holmes tract, Eagle Pitcher lease, Okmulgee County." And payment of $1,500.00, interest $20.00, total of $1,520.00. The payment is in typewriting. The voucher on 1,282, dated April 2, 1923, reads, "To apply on last payment of royalty interest 70, Ellis Holmes tract, Eagle Pitcher lease, Okmulgee County, Oklahoma, payment $1,000.00, interest $6.67, total, $1,006.67." The next check, dated April 5, 1923, was payable to W. H. Peckham for $1,011.34. The next check dated April 25, 1923, for $1,526.66, is payable to B. L. Fain. The next check dated June 15, 1923, for $1,020.00, is payable to W. H. Peckham. The next check, dated June 15, 1923, for $5,000.00 is payable to B. L. Fain. The next check, dated August 14, 1923, for $4,120.97 is payable to B. L. Fain, but it does not look like his indorsement. Under the indorsement is G. W. Peckham and it looks like
1295 George Peckham's writing. We have a notation on here which shows that it was deposited to the

credit of George Peckham. The next check dated August 14, 1923, for $1,033.33, payable to W. H. Peckham but indorsed by W. H. Peckham and under it G. W. Peckham, all in the same writing. It looks like George Peckham's handwriting. The next check for $1,560.00, dated August 14, 1923, payable to B. L. Fain, not indorsed by B. L. Fain, it is in his handwriting. B. L. Fain, and under it G. W. Peckham, looks like George Peckham's handwriting. Those checks should total $27,750.00 plus interest. The first contract price was the one dated February 3, for $1,200.00; the next one dated March 5, $6,250.00; the next one dated June 4, $9,000.00; which makes $27,750.00 plus interest. I do not have any title papers showing where and when George Peckham had any interest in this property, other than that Bill Peckham and George Peckham and B. L. Fain traded together at that time and were partners. George Peckham got part of the money. We are not suing for that money in this suit. The title came from W. H. Peckham.

Mr. Boone:

We offer the assignment in evidence.

1296 DEFENDANT'S EXHIBIT 137.

W. H. Peckham to Wichita Royalty Company.

Consideration $10.00 and other valuable considerations.

Conveying 38/80ths of all the oil and gas rights in, to or under the following described land situate in the County of Okmulgee, State of Oklahoma, to-wit:

The North 1/2 of the Southwest Quarter Section 34, township 12 north, Range 12 east.

Dated August 1, 1923.

50c in documentary stamps, canceled.

Duly acknowledged.

Filed for record on August 18, 1923, at 10:00 o'clock A. M.

Recorded in Book M 259, on pages 262.

The Witness:

I don't think we are suing for this tract of land. These checks were returned to us at the end of the month. That was the usual custom, when the checks would come back we usually made our entries from the checks. These checks were all paid and charged to our account in 1923, and returned to us during the same year, we have had them in our possession all the time. I do not think that George Peckham and Bill Peckham and B. L. Fain had a partnership, but I am quite sure they did trade together. I couldn't say whether they were interested in this sale or not, I do not know anything about the details. Properties, Nos. 67, 70 and 73, are not included and we are not seeking an accounting in this suit on those moneys. I think we received $10,081.56 as proceeds from
1297 this lease, up to January 31, 1933. I think the runs are tied up now. They were placed in the mortgage to Guy Rogers. Guy Rogers or anyone else has not got any proceeds out of this that I know of. Those properties have never been re-assigned to the company or the mortgage released. No assignment was ever had back from Guy Rogers or anybody else that I recall.

I now hand you assignment dated April 4, 1923, from W. H. Peckham to Wichita Royalty Company covering the south half of the southwest quarter, covering the one-quarter interest in the south half of the southwest quarter of section 74, township 12, north, Range 12 East which is acknowledged the 25th of April, 1923, we paid $23,250.00 for that, here is the check, dated February 8, 1923, payable to W. H. Peckham for $10,000.00, which is the first one, and No. 1,226, that does not look like his indorsement. The next check is for $3,020.00, dated March 7, 1923, No. 1,251, payable to W. H. Peckham and seems to be his indorsement. The next check is No. 1,292 for $1,520.00, dated April 9, 1923, payable to the City National Bank. The voucher on that check reads, "To apply on last payment of royalty interest 68, Ellis Holmes tract, Eagle Pitcher Lease, Okmulgee County, Oklahoma, payment

$1,500.00, interest $20.00." The next check is dated August 14, 1923, for $9,219.51, and is indorsed W. H. Peckham under it G. W. Peckham, both signatures being, or seeming to be G. W. Peckham's. All of these checks were signed by E. E. Scannell for trustee. They
1298 were paid by the bank and returned to me the next month, September, 1923, and have been in my possession all the time. We acquired the lease, or an interest from W. H. Peckham, in August, 1923, it is signed by him and filed for record on August 18. I do not think this is one of the pieces of property we are suing on, at that time I realized that George Peckham as well as W. H. Peckham were buying property and selling it to the company. Our check shows that property produced $17,659.23 up to 1-31-32, I could not tell you what it has produced since January 31, 1932. That property is also included in the mortgage to Guy Rogers.

Property No. 72 is the Tonkowa, Oklahoma, property, acquired from B. L. Fain. I took the acknowledgment of all three of these documents. We paid $20,625.00 for it. Those five checks have gotten misplaced, I can read them from the voucher, the checks are Nos. 1299, 1,319, 3, 20 and 36, all of them dated 1923. I don't think we are suing for any of that back. I have now found the checks, Property No. 72 was purchased under contract dated April 19, 1923, which was offered in evidence as Defendant's Exhibit 10. The check No. 1,299, payable to B. L. Fain for $10,000.00, no indorsement, the check was paid. The next check, $1,258.33, dated May 7, 1923, payable to B. L. Fain, and seems to be his indorsement. The next check dated June 16, 1923, No. 3, for $2,533.33, seems to be his indorsement. No. 20, dated July 6, 1923, for $2,550.00, payable to B. L. Fain and seems to be his indorsement. The next check dated August 2, 1923, for $4,627.11, payable to B. L. Fain and seems to be
1299 his indorsement. I do not think any of those items are included in the suit we are seeking to recover from the defendant.

Property No. 74, assignment from B. L. Fain dated October 16, 1923, covering 1/32nd interest in a certain piece of property in Navarro County, Texas, we paid for that property $5,000.00. The check is dated October 17, 1923, $2,000.00, payable to B. L. Fain. The next check is payable October 27, 1923, for $1,500.00, payable to B. L. Fain. The next check is dated December 3, 1923, for $1,520.00 payable to B. L. Fain. We are not suing for any of those amounts. I don't think George Peckham was interested in that one. B. L. Fain and George Peckham were dealing together, but I don't believe George Peckham had anything to do with it.

Property No. 75, has already been introduced in evidence.

1300 E. E. SCANNELL recalled for further cross examination by Mr. Boone, testified as follows:

You asked me for the Tillson-Geeson property No. 54, if it produced any oil; we carried that under the Lacy Held, and it did produce $4,077.63 worth of oil and our first entry, I think was January 1, 1923, and to 3-31-23, produced $1,747.11, and from June 1, 1923, to May 31, 1924, $1,252.24; June 1, 1924, to May 31, 1925, $553.26; from June 1, 1925, to May 31, 1926, $330.27; June 1, 1926, to May 15, 1927, $165.89; and from June 1, 1927 to December 31, 1927, $28.88, and there it stopped producing.

You also asked me to check the oil runs on the Black Royalty and I have written for that information. You asked me to find the original contracts to W. H. Peckham on the Ellis Holmes, and I have been unable to locate them so far.

I have not been able to find journal entries Nos. 18, 26, 27, 28 and 29.

Property No. 75, assigned from G. W. Peckham to the Wichita Royalty Company, conveying an undivided 1/64th interest in lots 13 and 14, in block 27, of the American Tribune New Colony Lands in Archer County,

Texas, dated April 22, 1924, which has $21.30 stamps on it, we paid $21,250.00 in cash for that property and $6,250.00 out of the oil, a total of $27,500.00. I canceled those stamps, that is in my handwriting. The first payment was made on February 2, 1924, out check No. 154, for
1301 $12,000.00, the check was payable to B. L. Fain and indorsed by him, but it is not in his handwriting, it is in mine. The check was paid February 2, 1924, and deposited to the credit of G. W. Peckham on the same date, according to our books, also the City National Bank books. I indorsed it, it has no body's signature on it except mine for the trustee. I indorsed it for B. L. Fain. I expect I took it over to George Peckham's office and handled it there. Evidently the bank required no other indorsement. I do not remember the individual circumstances of that particular check. I could not tell you who made out the deposit slip. Check No. 154 was drawn on the City National Bank and paid by them on the 2nd of February, 1924, and deposited to the credit of George W. Peckham, returned to the Wichita Royalty Company October 1924, and has been in their possession since that time. The voucher on that check No. 154, reads "To purchase of royalty interest in Tonkowa and Creek County, Oklahoma, Luncy Deere, Carmichael, Ceverlin, McDaniel and Gothrey, the amount is $12,000.00," that is in typewriting. Then we have an ink notation on the voucher that says, "See letter from G. W. Peckham to Wichita Royalty Company dated March 17, 1924. This money to apply on Wilson Royalty instead of above." I expect I had authority to indorse Mr. Fain's name on that check when I did so. I imagine both George Peckham and B. L. Fain understood about it, they were trading together, I did not forge anybody's name. I do not think I would indorse a man's name to a $12,000.00 check without his authority. Here
1302 is a deposit slip in George Peckham's handwriting on the 2nd of February for $12,000.00, which I imagine is that check, it is the same amount. On Mr. Peckham's deposit record February 2,

there is only one item of $12,000.00, so I think that is the deposit slip. It does not show that Mr. Peckham was dealing so heavily that he would likely have many deposits of that size on that date. This check does not have George Peckham's name on it. Nobody ever touched the check, as far as it shows, except myself. I will try and get you my bank account, I do not have it here. I would only be able to tell you this, I worked for George Peckham a long time and was subsequently associated with B. L. Fain and they knew me well enough to know that if there was any possible chance of me getting that check they would have said something about it, or I would not have worked for them all those years. Because I find a deposit to George Peckham's credit in that amount on that day, I am assuming that is the check, and I think that is a correct assumption. I know that I did not get the cash for that check, I know positively that I did not get cash or credit for my own account, nor did I get a cashier's check for it. During all this time, I don't remember that I had a cashier's check that exceeded a thousand or two thousand dollars.

The next check, 185, for $9,250.00, dated March 17, the voucher reads, "To cover difference in purchase price of Tonkowa-Deere Royalties, our check No. 154, and the purchase price of $27,500.00 for one-eighth of royalty on the Luke Wilson eighty, block 27, Ray-Massie, Featherstone & Staniforth leases. Total cash payment $21,250.00 to be paid from oil, $6,250.00. I have explained that. That check was given in the first place, that property purchased the Tonkowa Royalty and there was no delivery of the Tonkowa property and they applied $12,000.00 instead to the Luke Wilson Royalty, which explains the whole transaction, it makes up a total of $27,500.00. I knew at that time that B. L. Fain and George Peckham were trading, buying leases and royalties pro and con with each other and for the royalty company and transferring them back and forth. The transaction with the Luke Wilson covers one-eighth of the royalty on eighty acres out of lots 13 and 14, block 27,

1303

out of the Luke Wilson land; I think that is about the only piece of royalty that Uncle Luke sold and the deal was handled and the purchase was made by G. L. Fain, as I remember, and George Peckham together. B. L. Fain went to Kansas City and made the trade with him up there. I think that is all they got out of it. The entire deal was 1/8th royalty. They sold to the Tolowa and the Wichita Royalty, a King royalty, R. A. King, and Dr. Massey, is all divided up, all this full 1/8—I don't remember what they got for that portion they sold to Tolowa, I think that was in the record the other day. As I told you a moment ago, when Mr. Fain and I were in association together, there was so much pressure brought by the bank against him to get him to try to get me out in order to do what they wanted to do here, that I
1304 was forced to leave my association with Mr. Fain.

I could probably get you the information of what Tolowa paid for that, my memory is, I think it is in the record, it shows already that the consideration was $100,000.00, $50,000.00 out of oil. I think that is in the record. I know George Peckham and B. L. Fain were interested in the purchase. The indications are the first sale might have been the Wichita Royalty Company, inasmuch as they had paid $12,000.00 in February and subsequent sales came along in March. I was in the original purchase with Mr. Fain and Mr. Peckham to the extent of $2,000.00, in a $150,000.00 deal. I put up $2,000.00, had a two percent interest, I got back $2,880.00, which is all, as I recall. I will get a complete statement of that later. I have some information here you asked about heretofore; I have a check on your exhibit 58, March 19. I got a check $2,000.00; and your exhibit No. 60, I got a check for $880.00 from George Peckham, and I testified in the former trial, on page 624 of that record, that I borrowed from the Security National Bank, $2000.00 to put on this deal, and I reported on my tax return in 1924, $880.00 profit. Bill Peckham might have been interested with me in this stuff, I don't think Dr. Massie

was, I think he bought a half interest in the royalty afterwards. He bought some of the royalty, the same as the Tolowa, and Wichita and King, and the King Royalty Company, I think that is all they bought in. When B. L. Fain went to Kansas City to buy this royalty, George Peckham was associated with him, I don't think
1305 Doc Massie was, Bill Peckham might have been. They traded together. I was interested in this transaction.

I have never found the total amount received out of the one-eighth royalty they bought from Uncle Luke Wilson, it is not my business to find out. When George Peckham told me that was my part, I was satisfied. It shows here on the record we paid $27,500.00 for the property, paid $9,250.00 and $12,000.00, and $6,250.00 out of oil runs. It does not show that I got that money. It is signed by E. E. Scannell for the trustee, that is, the check is, and indorsed B. L. Fain, I wrote his name. If Mr. Fain thought I got the money, he would have asked the bank for a refund. I did not get that money. I do not recall whether this $12,000.00 was the item we are trying to recover from the bank and Mr. Harrell or not. The bank did not get credit for that check, neither did J. T. Harrell. The bank paid the check, and it was deposited to George Peckham's account, the deposit slip so shows. The Wichita Royalty Company got the property and it is very evident that George Peckham and B. L. Fain got the money. The check to George Peckham dated March 17, 1924, indorsed by him, and deposited to his account on March 18 shows his indorsement on it, and he got the money.

I did not carry any account in the City National Bank at the time of the item No. 154, for $12,000.00 was handled.

Mr. Boone:

We offer the check in evidence for $12,000.00, item No. 154, Defendant's Exhibit 138.

1306 DEFENDANT'S EXHIBIT 138.

(Check) Wichita Royalty Company, Wichita Falls, Texas, February 2, 1924. No. 154. "8" When properly indorsed pay to the order of B. L. Fain $12,000.00. To City National Bank, Wichita Falls, Texas, Wichita Royalty Company, Dep. to cr. of GWP 2-2-24, by E. E. Scannell for trustee. (Indorsed) B. L. Fain. Perforated Paid 2-2-24.

1307 The Witness:

About this time George Peckham and B. L. Fain were closing out this Tonkowa property. They made a profit on that.

Mr. Rogers:

We offer this check in connection with the one previously offered.

(Marked "DEFENDANT'S EXHIBIT 139" as follows:)

(Check) Wichita Royalty Company, Wichita Falls, Texas. "7" March 17, 1924. No. 185. When properly indorsed pay to the order of G. W. Peckham (Dep. to cr. of G W P 3-18-24) $9250.00. To City National Bank, Wichita Falls, Texas. (Signed) E. E. Scannell for trustee, Wichita Royalty Company. (Indorsed) G. W. Peckham. (Perforated) Paid 3-18-24. 7748.

1308 The Witness:

I don't know how much the Tonkowa property made, I think this particular deal in its entirety involved several different transactions, involves this check and the voucher on this $12,000.00 check, was originally issued for additional Tonkowa property, I think we were supposed to have gotten an interest in that. I think we made a number of sales on that amounting to considerable money, I would not be able to tell you how much. I think

George Peckham and B. L. Fain used to say that the Wilson Royalty was the largest transaction they ever made. The Tonkowa involved seventy thousand dollars, but it was bought in different pieces.

No. 40, the oil production from that lease was $25,476.00 up to the time of the sale November 25, 1927, which included the $6,000.00 oil payment, and the $6,250.00. As I understand it, Mr. Lambert and I are not in agreement on that, and I have agreed to re-check it with him, as soon as I have the opportunity. The sale price of this was $5,700.00, which is included in the $11,400.00, which I say on May 1, 1928, set upon our books, bills receivable. The ledger shows journal entry No. 18, $11,400.00 notes receivable, does not say who it is from. I am sure I do not have any note to the Royalty Company, I did not give the Wichita Royalty Company a note for $12,000.00. I told you I do not have journal entries 18, 26, 27, 28 and 29; when this thing first started, I told Bill Peckham to come over to the office and bring his auditor and satisfy himself as to everything that was in it, and I also
1309 brought these checks when the thing first started, and placed them before Mr. Harrell and the bank, and explained the situation to him, and if he thought there was anything wrong, that was the time for him to say. I did not do that before George Peckham died because I was not the trustee of the Wichita Royalty Company, and had no authority whatever only to do what George Peckham told me to do, and I think I did pretty well as he told me, because I worked for him a long time. All of these details I can't remember, I had other business I was connected with at that time.

I do not have any conveyance on property No. 76. Paid out $21,000.00 without expense, it says here that the check went to the Security National Bank. There are no indorsements on either of those checks. They are signed by E. E. Scannell for trustee, nobody's name on there except my own. That $21,000.00 went out of the company on my own signature. The money went to George Peckham. We may have had an assignment, but I don't

recall. When the property was closed out, we no longer owned it, and it was probably taken out of the file, I didn't see it any more if we had an assignment. Check No. 237, is Plaintiff's Exhibit 162, says, "To purchase an interest in lots 9 and 10, block 41, J. H. White lands Archer County, Texas, total cost $21,000.00, this check $11,000.00." I think George Peckham got the money on that, I have no way of showing, except the bank can tell you more about that than I can. I know I did not get that
1310 money. If you will produce George Peckham's bank statement from the Security National Bank, I expect you will be able to find it. I offered Bill Peckham, when this thing first started, to check everything for him and go into everything about it and allow him any privilege that they wanted to in regard to the audit of the books of the Wichita Royalty Company and see if everything was in shape. The check No. 237 was cleared in the Security National Bank on July 2, 1924, it may be July 3. Check No. 246, Plaintiff's Exhibit 161, was likewise dated July 24, 1924, for $10,000.00, payable to the Security National Bank, signed by E. E. Scannell for trustee, and does not show that anyone else handled it. The two checks, Plaintiff's Exhibit 161 and 162, had nobody's signature on them but mine. The transaction was closed out, and if there was any assignment for them, when the deal was closed out, it came out of our files, and I do not have anything on it now. The Security National Bank statement for the month of June, 1935, shows that on December 31, 1924, he had a balance of $6.42 in the Security National Bank; and that his closing statement of these three, March 24, 1926, he had $8,107.00 in the bank, and on May 10, 1926, the final balance was $121.37. I will do my best to find the account of July, 1924. I know George Peckham got this $21,000.00, check No. 237, dated July 2, was cleared by the City National Bank on July 3—I mean, by the City National Bank paid; that on July 3, that day, George Peckham deposited $11,321.82. Check No. 246, on July 24, paid by the City National
1311 Bank, on the 25th it shows that George Peckham deposited to his personal account, $10,000.00. I

think I read in Mr. Harrell's interrogatories that that is one of those checks. I want to say in regard to this transaction that when George Peckham sold this to the company, that he called me in there and I know about the deal and I made the check while I was sitting there—I don't remember about the assignment, but I think there must have been something about it that we got. I do not know that B. L. Fain had the lease, I think it was carried by B. L. Fain, and George Peckham had an interest in it together, they were trading together, I couldn't tell you whose name it was in. I was up at the office, and he told me to make the checks out. I think this instrument here is the assignment where the property went out of the Wichita Royalty Company, and we got our part of the money for it, I think perhaps it was held in the name of B. L. Fain. Teller No. 4 in the Security National Bank cashed the $11,000.00 check. This check which you now hand me was handled by Teller No. 7 in the City National Bank, and Teller No. 4 in the Security National Bank. The deposit is $11,321.82. This $11,000.00 check deposited in the Security National Bank was paid. Here is the original deposit of George Peckham, $11,321.00 in his handwriting, handled by teller No. 7, No. 7's name is not on the check for $11,000.00. If this $11,000.00 was not in currency, there ought to be some transaction from the records of the City National Bank to show what it was.

1312 Mr. Boone:

We offer the original deposit slip in evidence and ask that it be photostated, in connection with Plaintiff's Exhibit 162, marked "DEFENDANT'S EXHIBIT 140."

Deposited with City National Bank for credit of G. W. Peckham, Wichita Falls, Texas, 7-2-1924. Please list each check separately.

	11,000.00	
	321.82	"7"
Total	$11,321.82	

1313 Mr. Boone:

We also offer in evidence "Plaintiff's Exhibit 162" and ask that it be photostated in connection with this matter.

(Instrument marked "Defendant's Exhibit 141" as follows:)

DEFENDANT'S EXHIBIT 141.

(Check) Wichita Royalty Company, Wichita Falls, Texas, July 2, 1924. No. 237. When properly indorsed pay to the order of Security Nat'l Bank $11,000.00. To City National Bank, Wichita Falls Texas. Wichita Royalty Company, (Signed) E. E. Scannell for Trustee. (Indorsed) ..... (Perforated) Paid 7-3-24.

1314 The Witness:

Teller No. 4 handled the check of $10,000.00, No. 264, Plaintiff's Exhibit 161; the check was deposited to cash in the Security National Bank and went through the clearing house on July the twenty-sixth; when I take up a deposit in George Peckham's account of $10,000.00, I do not say it was that check, I say it was that money. I account for it in this way. George Peckham went over there and got a cashier's check, or something, and brought it back and deposited in the bank on the 25th; this check was made out on the 24th and it was dated the 24th and it was cleared on the 26th. That ought to leave him plenty of time to get the cash, or a cashier's check, or whatever it might be that he got for that $10,000.00. You now hand me the original deposit slip for $10,000.00, which was not paid before the check cleared on the 25th, handled by teller No. 6. I did not get this money.

(Defendant's Exhibits 142 and 143, as follows:)

DEF. EX. 142.

(Check) Wichita Royalty Company, Wichita Falls, Texas, July 24, 1924. No. 246. When properly indorsed pay to the order of Security Nat'l Bank $10,000.00. To City National Bank, Wichita Falls, Texas. Wichita Royalty Company, By E. E. Scannell for trustee. (No indorsement.) (Perforated) Paid 7-26-24. "4".

DEF. 143.

Deposited with City National Bank for credit of G. W. Peckham. Wichita Falls, Texas, 7-25-1924.
$10,000.00.

1315 The Witness:

Neither of these checks for $11,000.00 and $10,000.00 July 2 and 24, respectively—being the exhibits heretofore referred to, were not deposited in the City National Bank, but in the Security National Bank and cashed by that bank. If they were deposited, they would have shown in the name of somebody there. A cashier's check, if it had been obtained, would show in somebody's name. I have told you positively that I did not get this money and George Peckham did get it.

I hand you an assignment from B. L. Fain to Wichita Royalty Company dated February 20, 1925, covering 1/64th of the oil and gas on one hundred acres in Archer County, Texas. We bought this property as well as 1/8th of the royalty, dated December 15, 1924, on thirty acres of land in Archer County from B. L. Fain, to the Royalty Company. On December 4, 1924, we gave our check No. 309, on which the voucher reads, "In payment of royalty in Hayter lands in Archer County, 1/8 royalty in thirty acres, 1/8 of royalty in one hundred acres." I think George Peckham had an interest in that. The check is made payable to B. L. Fain and indorsed by him. George Peckham's name is nowhere on the check. E. E. Scannell

signed the check for trustee, that is me. Oil runs were obtained from this property, we checked up to April 30, 1932, $2,908.54. I think we still own that property, but I am not sure whether it is producing, or has been withheld.

Looking on the record, from January 1 to April 30, we got $25.32, so it looks like it is still producing, a very small amount. I will look it up for you. I do not think
1316 we sue for property No. 77 in this case.

Property No. 78, assignment from F. O. Harrell to the Wichita Royalty Company, Plaintiff's Exhibit 190, already introduced in evidence, covering one 1/128 interest in one hundred and twenty-five acres in Archer County; we got the assignment from F. O. Harrell. We made our check No. 317 to G. W. Peckham and the voucher reads, "To purchase one sixteenth of one-eighth royalty in one hundred twenty five acres known as block 46, of the Mead M. L. Pasture subdivision of the B. G. Thomas Survey, Abstract 458, Archer County, Texas. Amount $695.00." We got the assignment on December 16, it is acknowledged before me. It is filed for record on December 24. The check was issued on December 23. I do not know what George Peckham paid for it. As far as I know about this property we got it from George Peckham. I have had that assignment in my possession all the time, for this property. It is not from George Peckham, but F. O. Harrell. The indications are that when I took this acknowledgment of F. O. Harrell, I should have known that the property was coming from him. In regard to accusing George Peckham of fraud, I wish to say this: I did not file this suit only on the $19,000.00 to start, and the suit was originally brought by the City National Bank and not by me. I am defending the suit for the interest of the Wichita Royalty Company. The Supreme Court of the State of Texas said what George has done, he is guilty of fraud, and if that is guilty of fraud, it is ok. I did not keep
1317 a notary public record at the time I took Mr. Harrell's acknowledgment December 16, 1924.

The check was made to George Peckham and deposited in the City National Bank to his account. I did not investigate to see whether or not he had paid F. O. Harrell. This is among those properties that are repudiated in regard to this suit. It bears a revenue stamp of $1.00, and shows it was more than $500.00. I did not cancel the revenue stamp, I do not know F. O. Harrell's handwriting, I know his signature. The stamps were canceled December 23, 1924. I think we have had that in our possession since it was turned over to us, December 23.

Mr. Rogers:

The check is Plaintiff's Exhibit 189, and the conveyance is Plaintiff's Exhibit 190, heretofore offered in evidence.

The Witness:

This property produced a little oil, our records show we got $38.25 off of it. Mr. Lambert checked it and said we got $69.50. It is among the repudiations that we have given in regard to this suit.

Property No. 79, Plaintiff's Exhibit 172, covers 1/16th of the oil, which is one-half of the Royalty under 117 acres in Archer County, Texas, dated June 20, 1925, signed by J. H. Massie and George B. Rhea to the Wichita Royalty Company. Revenue stamps 50c. The consideration is $10.00 and other considerations. As far as that property being bought from George Peckham, our check dated May 5, 1925, No. 373, to George Peckham, to purchase of one-sixteenth of the royalty in the
1318 Routon land, one hundred and seventeen acres in Archer County, purchase price $2,500.00. I think that is the Isaac Holman lease. There is no way of knowing exactly when we got the assignment, except it is dated June 30, 1925, and acknowledged June 30, 1925, filed for record November 5, and recorded on January 12. We paid for it on May 5, 1925, by giving George Peckham a check for $2,500.00, being Plaintiff's Exhibit 170, our check No. 373 Plaintiff's Exhibit 173 is a check dated May 5, 1925, "Pay to the order of Ray and Massie, $2,-

500.00, for one-twelfth interest in deal with Allen, Moran, Routan land." The same amount of money we gave him. However, the interest is different, the check says one-twelfth interest and we got a one-sixteenth interest. This is G. W. Peckham's check signed by G. W. Peckham in his handwriting. Paid on May 6, 1925. The indorsement reads, "Deposit to the credit of Ray and Massie." I do not know whose handwriting Plaintiff's Exhibit 173 is in. This is one of the pieces of property that we sue on in this case. We got some oil off of that, I think we got $419.23, and the last we received was for the period 6-1-30, to 11-30-30, and for that period, about five months, we got $2.80, I think possibly the property was abandoned. However, I will check it and find out. I know the Routan land, I do not know how much that deal was, I have no way to find out. If that is the same deal George Peckham paid out the same amount that we gave him on the day he gave his check, that is the first time I ever saw it,
1319 when it was introduced in evidence the other day. The Wichita Royalty Company's check was made on May 5, and George Peckham's check was made on May 5. I have had this check of George Peckham's ever since it was returned from the bank, it is dated May 5, Plaintiff's Exhibit 173. I did not trace the title of this Routan land to see how much was bought. It is in the repudiated transactions in this suit. I do not know whether it was one-sixteenth or 1/12th, I do know that George Peckham's check was made for $2,500.00 on the same day our check was made for the same amount, and his check is made payable to the same people that gave us the 1/16th royalty.

Property No. 80, assignment from G. W. Peckham to Wichita Royalty Company, dated July 1, 1925, Plaintiff's Exhibits Nos. 174 and 175; another assignment from G. W. Peckham to the Royalty Company dated July 20, 1925, being 1/16th royalty in some five tracts of land in Archer County. Property No. 80 is called the Anderson property. I have had these assignments in my possession and with the royalty company since September, 1925.

One of them recorded on September 23, the other on September 28, 1925. These instruments have been there for the inspection of the Wich[illegible] Royalty Company, and I guess any stockholder could have seen them who wanted to. The first check No. 385, is in evidence as Plaintiff's Exhibit 179. The voucher was not on the voucher check the amounts were on there, and it looks like the information was secured subsequently. As far as the check is concerned, it just shows $6,000.00 for the blank
1320 voucher. We evidently secured the information somewhere between June 24, and June 29, because when the next payment is made, it is all carbon and that would be Plaintiff's Exhibit 180. I probably got the information when I went to George Peckham's office after he called me. The first assignment I got for four pieces of property dated July 1, 1925, the next one July 20, 1925; the first one recorded on the 28th of September and the next one on the 23rd of September, the chances are we didn't get them until that time, just prior to that time. I do not know what George Peckham paid for that property, nor who he purchased it from. We have checked up on that property and it has paid $10,174.51. The last payment we got, January 1, 1932, to March 31, 1936, we had two checks, one for $706.04, and one for $941.00. I don't think we have gotten anything since 1936, we still have the property. I imagine the oil runs are held up. I don't know whether this property is included in the mortgage I gave to Guy Rogers and Charley Black or not.

Property No. 81 is part of this check No. 427. The assignment is here somewhere, in evidence. I now hand you assignment from A. J. Mathis and L. Mathis, dated October 14, 1935, being Defendant's Exhibit 18, to the Wichita Royalty Company for $2,500.00. Revenue stamps $2.50. I gave George Peckham a check on October 8, 1925, being my check No. 427 and being Plaintiff's Exhibit 57, for $5,500.00, which went for the purchase of this property. Our voucher on check 427 reading, "Property No. 81 to purchase one-fourth of royalty of the east

thirty acres of 71 acre tract out of the D. Milligan Survey, Callahan County, Texas, $2,500.00." It was a part of the check for $5,500.00. There was other property connected with this check for $5,500.00, property No. 82, to purchase of 1/8 of the royalty of the east half of section 4, B. B. B. & C. R. R. Co. Survey, Certificate 692, 320 acres, Archer County, Texas, $1,500.00. The Dietrich property, additional interest not given, to be accepted on approval of title, making up the amount of $5,500.00. Number 82, is the assignment from B. L. Fain to one-fourth interest in oil and gas in Archer County, Texas, dated October 9, 1925, just five days before the other one was dated, and bears revenue stamps, $1.50 on it. That is on the Kunkle and Dietrich. That makes $4,000.00. That is one of the properties we are suing for here, the Callahan property, as is also the Mathis. Callahan property deed was filed of record on the 23rd day of October, 1925, and the Dietrich and Kunkle November 12, 1925, we have probably had those since these dates. This check for $5,500.00 for these properties was signed by me for the trustee, payable to the City National Bank, and George Peckham's name is not on it. The money was credited to George Peckham on October 8, 1925, the day of the cancellation. I had no way of finding out what George Peckham did with the money. I have no way of knowing whether the deed from Mathis came through the First National Bank or not, except from the testimony that was offered here the other day by Mr. Carson. This check, Plaintiff's Exhibit 49, signed by George Peckham, $2,252.25, was payable to the First National Bank. The check dated October 20, 1925, for $2.50 for revenue stamps, was given by George Peckham. We called the Massie property the Callahan property, that is the way we distinguish it, and I believe it is located at Cross Plains, or somewhere near there. In the month of October, 1925, George Peckham gave C. A. Rogers a check for commission on Cross Plains property, $225.00. The titles were examined by E. C. DeMontel, and we gave him a check for $71.00,

dated November 3, 1925. I am not acquainted with this remittance letter of $2,250.00 from the First National Bank, which you now hand me.

Mr. Boone:

We offer it in evidence and ask that it be photostated, DEFENDANT'S EXHIBIT 144.

To First National Bank, Wichita Falls, Texas, Oct. 16, 1925.

Stockyards National Bank,
Fort Worth, Texas.

All enclosures on this sheet are handled by us as cash, and are sent you for Prompt Remittance.

Do Not Protest items $10.00 or less or those bearing this stamp or similar authority from a preceding indorser. No Pro. 37-12.

Wire non-payment items $500.00 or over.

5	5.00*
10.20	5.00
16.34	46.00
.22	168.01
.22	356.37
	47.50
	49.87
4	1,314.96
10.20	2,250.00
37.27	4,242.71
2	1.514.00
	5.756.71

1323 The Witness:

This check from B. L. Fain for $1,500.00, "Sale of Kunkle Royalty," indorsed by B. L. Fain, dated November 12, 1925. The assignment is dated October 9,

1925. Filed for record November 12, 1925, the same day the check was made, for $1,500.00. The same day we filed our instrument of record, and adding $1,500.00 to $2,500.00, that is the approximate amount, gives $4,004.75. Also I have here check dated November 6, 1925, from G. W. Peckham to Wichita Royalty Company, it went to the credit of the Wichita Royalty Company, and says, "Deposit only, G. W. Peckham, trustee Wichita Royalty Company." The check was given November 6, and paid November 10, 1925. Our books show a receipt for that money. In our ledger we have an entry referring to our cash memo No. 148, dated November 10, in the amount of $1,500.00, the memo recites, "money refunded on producing royalty which was not used as additional royalty interest, was not secured. Check No. 427." That is a check for $5,500.00, it was written at the time the entry was made, November 10, 1925, and that has been in my book all the time. He accounted to us for $1,500.00, and I have the carbons for the others. I do not think I overpaid him, nor did he overpay. It shows that on our record we gave him check No. 438, for revenue stamps, with the royalty deed, property No. 81, and exchange on that draft on Property 81, dated November 6, for $4.75, to G. W. Peckham. Adding the $1,500.00 to the $4,000 and some odd dollars, would give $5,504.75, and taking away the $4.75 would be $5,500.00. We repudiated the Callahan transac-

1324 tion in this record, as I understand it, it is our option to keep those that we wish and to return those that we do not wish. This indicates that he accounted for every dime in that transaction, our records account for $5,500.00. We got the Callahan property from George Peckham.

Mr. Rogers:

We object to his conclusions. This exhibit 18, photostatic copy in the record, speaks for itself, and the witness cannot vary that which it recites. The testimony affirmatively showing that the grantee's name was written in with a different typewriter than the other, and while

there is no allegation of theft in the petition, there is an allegation that G. W. Peckham could not trade with himself as an individual and himself as trustee, nor could he, on the 14th of October, 1925, purchase in his own name a blank assignment and pay therefor at a subsequent date, by honoring the draft therefor, out of his own funds, and later by inserting the royalty company's name therein, at a time in the fluctuating history of the oil property, and assignment of it to his personal interest, and give this property to the royalty company, while the books of the company were caused by him to balance. And while it now is sought to be shown that he paid as much for the property as he received from the royalty company therefor, such is not the point involved in the litigation. It is a question of whether G. W. Peckham could trade with himself as trustee in the territory of fluctuating value of
oil property, carrying it in his own name for a
1325 period of time and then when his own best interest dictated, he conveyed it to his trust, for the money he had been out.

(Which objection was by the Court overruled, to which the Defendant, Wichita Royalty Company then and there excepted.)

The Witness:

It seems like there was some kind of activity around in the territory where this Mathis property was located. I don't know whether anything happened to that property between the time he purchased it and the time that he paid for it to make it less valuable. That is the first item in our petition, the first item check No. 467.

I think the Kunkle royalty produced $9,494.67; we made a profit on the Kunkle royalty of $8,094.67. We are not offering that back in this suit. As I understand, Mr. Peckham is entitled to credit for anything he has coming and we are entitled to credit for anything we have coming—I mean the bank is entitled to credit, and that we are entitled to credit where we have anything coming. As I

understand it, I am entitled to have my option on accepting or rejecting these properties. It is not my option, I am acting for the trust. If I think it is to the best interest of the trust to tender it back, I tender it back, and if it is not, I keep it. I am not willing for the defendant, or George Peckham to have $8,094.67 profit on the Kunkle Royalty, we are keeping this property.

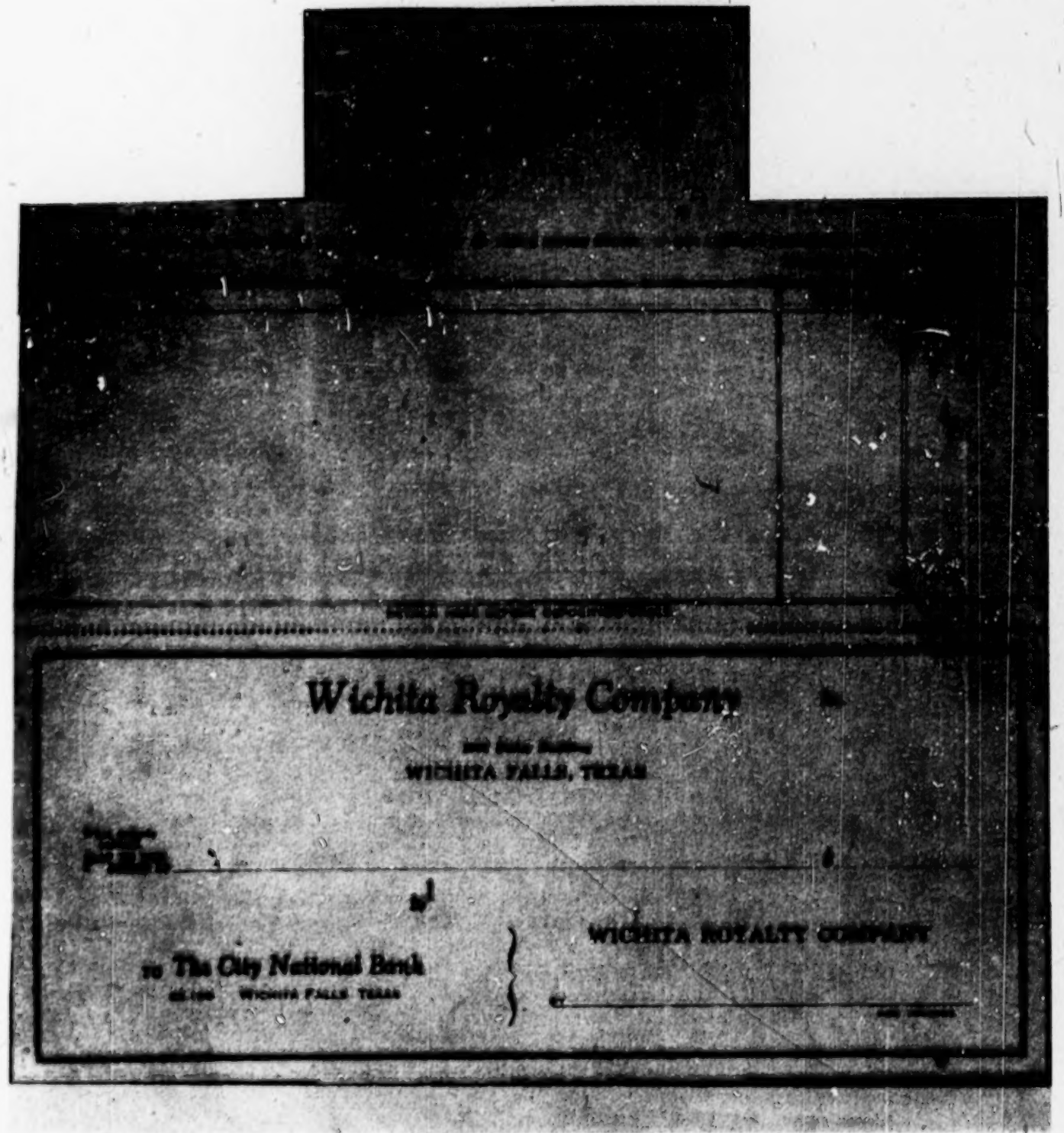
1326 Cross Examination.

By Mr. Humphrey:

What I hand you now is a copy of the present blank voucher from which we use in making these checks, and I think it is the same as we have used ever since we started in business, prior to Mr. Peckham's administration. The remittance advice is printed, and is on the perforated part which is separated from the check, it says, "Attached hereto is our check in full settlement of items listed below, if not correct, please return with explanation." Then it continues a printed description in detail. This is a voucher book in blank, and afterwards they are fastened together. During all of the time that I have been connected with the Wichita Royalty Company, we have made duplicates of checks and vouchers except as to the printed portion, that is, if we had the information at the time. The carbon is just an ordinary blank sheet of paper behind it, and it says, "Detach here before depositing this check." That is on the perforated line. Perhaps some of these came through the bank without being detached, but most of them were detached, whoever got the check retained the remittance advice.

Mr. Humphrey:

We offer it in evidence and ask that it be photostated, Plaintiff's Exhibit 193.


Wichita Royalty Company
WICHITA FALLS, TEXAS
To The City National Bank
WICHITA FALLS TEXAS
WICHITA ROYALTY COMPANY

1328 Re-Cross Examination.

By Mr. Boone:

Property No. 83 is the Porter Ranch, Item No. 2, in our petition, the first item, $1,250.00, on Page 7, check No. 451, that is one of the items we are suing George Peckham for. The voucher notation on check No. 451, December 28, 1925, City National Bank, $1,250.00, producing royalties, then it has a pencil notation which says, "No. 83, M. L. Porter Ranch." I imagine that pencil notation was put on there shortly after the check was written, as soon as we had secured the information. There is no conveyance to that property, as I understand it, it was a trusteeship in which Mr. Harrell and Mr. Basham and Mr. Harry Hines, and Mr. Knight were trustees, I never read it. The property was never in J. T. Harrell's name that I know of. The check for $1,250.00, Plaintiff's Exhibit 56, was credited to the account of G. W. Peckham. I couldn't tell you in whose handwriting, it is not mine, probably someone connected with the bank. I do not know whether this check was given to Knight and Hines for this royalty shown by Plaintiff's Exhibits 58 and 59 or not. Plaintiff's Exhibits 58 and 59, totaling $1,250.00 are signed by G. W. Peckham, and paid, the check was paid on December 21, 1925. There is the indorsement of Knight and Hines, W. T. Knight, by A. H. Heron, he is Mr. Knight's bookkeeper. The check for $50.00 is paid January 2, 1926, and is made to Knight and Hines for that amount; there is a pencil scratching on the back that I don't think it has
1329 anybody's indorsement on it. I do not know the signature of Bill Knight. The notation on the check for $1,200.00 says, 1/8th, one thousand—A, Archer County acreage, Porter land. On Plaintiff's Exhibit 59, the indorsement says "Balance cash payment on one thousand acres Archer County, Texas." These exhibits 58 and 59, are for the exact sum of checks 451, Plaintiff's Exhibit 56, of $1,250.00, if that is what they are given for, one of them is, I would not be sure about the other. That is the one for fifty dollars; it does not say anything about the

Porter Ranch, just says one thousand acres. The first one says, one thousand acres, one-eighth, and the second one says the balance on one thousand acres, both in Archer County. Both of them given before we gave our check to the City National Bank, which was credited to George Peckham. Both of these checks are payable to Knight & Hines.

Mr. Rogers:

We renew our objection heretofore made, to Plaintiff's Exhibits 58 and 59, in that it affirmatively appears from the record that the $1,250.00 evidenced by the two checks was paid by G. W. Peckham to Knight & Hines, and that the deed to the Porter Ranch, prior to any connection therewith by Wichita Royalty Company, or its issuance of check 451, to be vested in Knight & Hines, J. T. Harrell, G. W. Peckham and others, and that it was the individual property to the extent of an undivided 1/8 in G. W. Peckham and it is no defense to the royalty company suit, that G. W. Peckham as an individual
1330 some ten days later, made a trade with himself as trustee, whereby he caused the trust books to show that it had been sold to the Wichita Royalty Company. The rule depriving G. W. Peckham of any power of authority to bind the trust by said dual dealing.

(Which objection was by the Court overruled, to which the defendant, Wichita Royalty Company then and there excepted.)

The Witness:

Knight and Hines were connected with what is known as the Consolidated Oil Company, I think they were. I do not know when the opinion was finally written on the Porter Ranch.

Mr. Rogers:

The further objection in connection with that objection that the declaration of trust which constituted the charter

of the powers of G. W. Peckham, affirmatively required that any property acquired or to be acquired for or on behalf of the trust, should be held and carried in the name of the trust as such, and not in the name of any individual firm or corporation or other trusteeship or corporation, and it was beyond the power of the trustee to bind the trust by taking title thereto in his own name and paying therefor with his own money, later, without a deed of conveyance or other memorandum in writing, whereby his estate could be bound to enforce a trust thereon, in the event the property proved valuable, collected sums of money from the trust.

(Which objection was by the Court overruled, to which the Defendant, Wichita Royalty Company then and there excepted.)

1331 The Witness:

The deed you now hand me is dated December 1, 1925, and acknowledged the same day, filed for record December 28, 1925, the same day I gave our check to the City National Bank for $1,250.00. As soon as we got that information we put it on there.

Mr. Boone:

We offer the deed in evidence, Defendant's Exhibit 145.

DEFENDANT'S EXHIBIT 145.

Warranty Deed with Vendor's Lien, single and wife's separate acknowledgment.

M. L. Porter and wife, S. J. Porter, to W. T. Knight, Harry Hines, J. T. Harrell, C. E. Basham, W. L. Robertson Geo. W. Peckham.

Consideration $32,100.00, as follows:

$10,000.00 cash paid.

Note No. 1 for $7,366.66, dated December 1, 1925, payable on or before one year from date.

Note No. 2 for $7,366.67, dated December 1, 1925, payable on or before two years from date.

Note No. 3 for $7,366.67, dated December 1, 1925, payable on or before three years from date, all notes bearing eight percent interest from date.

Conveying the following described land: Beginning at a stone marked P. J. B. for an inside corner of the Peter J. Bailey survey; Thence South 950 varas to the S. E. Corner; Thence North 89-25 W. 951 varas, a 1332 stone for the Southwest corner Peter J. Bailey Survey, Abstract No. 30: Thence West 1941 varas to stone in road, the Southwest corner J. Pointevant Survey No. 1, Abstract No. 348; Thence No. 0-30W 1600 varas to the Northwest corner of the J. Pointevant survey; Thence East in center of road 960 varas to inside corner; Thence North 457 varas to Northwest corner, a fence corner; Thence South 89-43 East along fence 1020 varas to corner; Thence North 25 varas to corner; Thence East 1295 varas to Northeast corner, in west line of Effie Stanford land; Thence South 1134.4 varas to South line of Peter J. Bailey Survey; thence West 345.2 varas to place of beginning, and containing 1070 acres.

The respective undivided interest of the above named grantees, in the land described in this instrument is as follows:

$32.50 in documentary stamps, attached and canceled.

Harry Hines	1/4 interest
W. T. Knight	1/4 interest
J. T. Harrell	1/8 interest

C. E. Basham	1/8 interest
W. L. Robertson	1/8 interest
Geo. W. Peckham	1/8 interest

Dated December 1, 1925.

Duly acknowledged.

Filed for record December 28, 1925, at 10:00 o'clock A. M.

Recorded January 20, 1926 at 10:10 A. M. in the records of said county, Volume 104, page 634.

1333 The Witness:

I don't know whether I knew that property was in the name of Knight & Hines or not. I had nothing to do with it. On the voucher it says, "M. L. Porter Ranch. Producing royalties." In pencil it says, "No. 83, M. L. Porter Ranch." I thought we did not get any title to it in writing, in fact I know we didn't. I don't know whether I knew who carried it or not, that was not any of my business particularly, I made the entries there I was told to make, and that is about the extent of it. I don't know whether I testified that I knew it stood in the name of Knight & Hines or not. If I knew about it, I still say that it was carried in Mr. Knight's name, I don't remember, but I was under the impression that it was held by someone, just how it was held, I don't know. As far as I knew, it was ours, the royalty company asserted ownership in it. The receipt you now hand me is dated December 15, 1925, acknowledge receipt in the sum of $10,000.00 by M. L. Porter.

Mr. Boone:

I offer it in evidence, Defendant's Exhibit 146.

DEFENDANT'S EXHIBIT 146.

December 15, 1925.

This will acknowledge the receipt this day of the sum of $10,000.00, being cash consideration as stated in warranted Deed of date December 1, 1925, executed by M. L. Porter and wife, S. J. Porter, to W. T. Knight and Harry Hines covering the following described land in Archer County, Texas:

1334 All that certain lot, tract or parcel of land, lying and being situated in Archer County, Texas, and described by metes and bounds as follows: Beginning at a stone marked P. J. B. for an inside corner of the Peter J. Bailey Survey; Thence South 950 varas to the S. E Corner; Thence North 89-25 W 951 varas a stone for the southwest corner Peter J. Bailey Survey, Abst. No. 30; Thence West 1941 varas to stone in road, the Southwest corner J. Poitevant Survey No. 1, abst. No. 348; Thence No. O-30W 1600 varas to the Northwest Corner of the J. Poitevent Survey; Thence East in center of road 960 varas to inside corner; Thence North 457 varas to Northwest corner a fence corner; Thence South 89-43 East along fence 1020 varas to corner; Thence North 25 varas to corner; Thence East 1295 varas to Northeast corner, in west line of Effie Stanford land; Thence South 1134.4 varas to South line of Peter J. Bailey Survey; Thence West 345.2 varas to place of beginning, and containing 1070 acres.

Signed: M. L. PORTER.

Witness: C. J. HARPER.

The Witness:

After December 28, 1925, the royalty company continued to assert ownership of this Porter Ranch property No. 83. The next payment on the Porter Ranch was check No. 554, dated December 2, 1926, $1,500.00, pay-

able to the City National Bank. Indorsed by
1335 G. W. Peckham, by A. B., I don't know who A. B. is, I imagine that was George Peckham's stenographer, Anita Brown. The notation on the back of the voucher is, "Notes payable land in fee, to apply on balance due on M. L. Porter, 1,070 acre purchase, $920.82. Interest paid on the above note $221.00." That is all in reference to that property. There is in addition to that with reference to some more properties. Out of the $1,500.00 check, $1,141.82 went on the Porter Ranch property. That check was delivered December 2, and paid December 2, 1926. On the same day, Plaintiff's Exhibit 96, to W. T. Knight, $1,141.82, $920.84 principal, I think that is what that means to be, and $220.98 interest, Porter Ranch, signed by G. W. Peckham. Indorsed W. T. Knight, and paid December 2, 1926. Those two checks seem to correspond in amount, exactly to the penny. As I understand it, many of these transactions we have repudiated because that is our privilege to elect those which we will keep and those which we will return and request our money back. It is a fact that George Peckham paid out $1,141.82, being the same amount as our check, as that portion of our check No. 554, charged to this property on the same day. The next check on this property is No. 670, dated December 20, 1927, and the voucher reads, "Check was issued to G. W. Peckham in the amount of $147.33, The voucher reads, "Interest expense on Porter Ranch property from December 1, 1926 to December 1, 1927." We were asserting owner-
1336 ship to this property then, because Mr. Peckham was the trustee. George Peckham told me to write that on there, and I wrote it, it has been on the books ever since, and if anyone wanted to see it they could have. I did not issue our check until December 20, and that was interest up to December 1, 1927. Plaintiff's exhibit 65 is a check, W. T. Knight, in the amount of $147.33, and reads, "interest to 12-1-27 on unpaid balance Porter Ranch, Archer County," signed by G. W. Peckham. That is the exact amount I gave fifteen days

later. That is the indorsement of W. T. Knight. That was paid. It is a fact that George Peckham paid that amount, which corresponds with the amount in our check No. 670, he paid it by check dated December 5, and I did not give him credit until December 20. I had been asserting ownership in this property for over a year. The next check we gave on this property is No. 778, dated January 14, 1929, to G. W. Peckham in the amount of $21.63, and the voucher reads, "Taxes paid on Porter Ranch, our proportion, $21.63". There might be another check that I do not have down here. Check No. 778 was issued on January 14. We have George Peckham's check dated November 26, 1928, issued to W. T. Knight for $21.63, interest on note on Porter Ranch. I have not given him any check for that. That is indorsed by G. W. Peckham. G. W. Peckham's check is indorsed by W. T. Knight, Knight and Hines. Therefore, George Peckham gave a check on January 14, 1929 for $21.63, and this check dated November 25, 1928, is issued to W. T. Knight for $21.63, on the Porter Ranch. We paid this
1337 amount as applied, this amount of $21.63, as applied on taxes paid on the Porter Ranch for our proportion, and George Peckham paid out a check to W. T. Knight, marked "Interest on note on Porter Ranch," in the same amount. In 1928, George Peckham paid that, and I did not give it to him until January, 1929. The Wichita Royalty Trust claimed that property, the Porter Ranch, from and after the time of its purchase in 1929. I notified the stockholders that we were claiming that particular interest, the letters were sent out, I am sure we reported it. It is Plaintiff's Exhibit 26, the bulletin to the stockholders. The docket sheet shows, the close of business 1925, December 1, 1925, at any rate the bulletin was sent out during 1926. It reported that the Wichita Royalty Company owned one-eighth of the land and royalty in 1,070 acres M. L. Porter lands, Archer County, Texas, cost $1,250.00 cash and $2,762.50 in equal payments due in two and three years from date of purchase.

Q. You knew at that time that this property was being held in trust by the company for someone?

Mr. Rogers:

We object to that as a conclusion of law, at least, a question of mixed facts and law, not the proper subject matter of verbal testimony. The title to real estate required by the statute of fraud to be evidenced by a memorandum in writing, and the declaration of trust expressly provided that such property if any, that the trustee acquires on behalf of the royalty company must be taken and held in the name of the trustee as such.
1338 And it not being shown by the stockholders letter that G. W. Peckham's personal interest in the transaction existed, and the record affirmatively showing that the stockholders were kept in ignorance of his personal interest in the transaction at all times prior to its repudiation and retender.

(Which objection was by the Court overruled, to which the defendant Wichita Royalty Company then and there excepted.)

The Witness:

I knew it, this bulletin was sent out by Mr. Peckham as trustee, and we discussed this thing. The actual preparation of the bulletin, and the actual work was done by me. The properties and everything was discussed, of every kind, very carefully with Mr. Peckham before it was written. I do not recall that any stockholder ever objected to claiming this interest in the Porter Ranch at any time. The other payment made on the Porter Ranch is December 19, 1930, our check No. 970, made to W. T. Knight, attorney-in-fact, $102.83, and the voucher reads, "to our proportion of assessment for 1930 on M. L. Porter Ranch, per statement attached. Interest paid." In ink. On December 17, 1930, we were paying it direct to W. T. Knight, and claiming ownership in the property then, so far as I know. I was the trustee then. I,

for the royalty company, was asserting ownership in this Porter Ranch on December 17, 1930, that was over four years after I had notified all of the stockholders that we owned this interest in that ranch. I knew then that
1339 the title was in the name of W. T. Knight as attorney in fact, that was over a year after George Peckham's death. It seems to me, somewhere in between there, at the time this check was issued—I don't remember just the date, but we sought to secure for ourselves at first, a title to do something in regard to showing that we really had an interest in it, but we never did do anything more than that. I looked into it and found just how the thing was situated. I recognized Mr. Knight was the owner whose title it was standing in, and sent him a check, as trustee of the Wichita Royalty Company, and it was paid out of the Wichita Royalty Company funds, indorsed W. T. Knight, Attorney in fact, Knight and Hines, by A. H. Herron. I don't know whether we ever paid any more than that, that is all the checks I have listed. No. 857, prior thereto on November 29, 1929, was issued to Knight and Hines in the amount of $84.41, "to our part interest to taxes on Porter Ranch, Archer County, Texas." By "our part interest" means whatever interest we had, one-eighth is what we were supposed to have. I was trustee of the Wichita Royalty Company. I signed for the trustee. I knew the name of Knight and Hines. I recognized that the Wichita Royalty Company had an interest, or at least he had paid for an interest. We got some rentals off of this property, but no royalty. On July 27, 1926, we received $111.67, and our notation on the credit memorandum reads, "Our proportion 1/8th of lease rentals, Miscellaneous Revenue from M. L. Porter Ranch, Archer County, Texas." We
1340 took that money and have kept it since, I think you will find that these items are taken into account in this suit. There is another account here, do you want that? I am sure we gave George Peckham credit for this in this lawsuit, if we have not, we want him to have credit for everything that is coming

to him, and we want credit for everything that is coming to us. We got George Peckham's check for $111.67; also our credit memo 208, 7-29-27, we received $115.81, Porter Ranch lease, rental income. It does not show from whom it was received. We kept it. We have offered to give you credit for it. This is property No. 83. According to these records and checks George Peckham paid out like amounts to those he received, corresponding amounts to what we paid. There are two checks here made to the City National Bank, which we have not shown whether they went to his account or not. The books of the company showing the amounts spent on the Porter Ranch correspond to the check given by George Peckham. You now hand me a check to W. T. Knight for $427.50, dated June 29, 1929. So far as I know, we do not have any record where we reimbursed George Peckham for that, I don't imagine it had anything to do with the Wichita Royalty Company, I doubt that the check has anything to do with the Porter Ranch; I imagine it has something to do with some kind of a game, we all know that George played lots of cards and he played for big stakes.

Mr. Boone:

We offer the check in evidence, Defendant's Exhibit 147.

1341 DEFENDANT'S EXHIBIT 147.

Wichita Falls, Texas 6-22-1929 No. .... The City National Bank of Wichita Falls Pay to the order of W. T. Knight $427.50 (Perforated) Paid 6-25-29 (Signed) G. W. Peckham (Indorsed) W. T. Knight (Stamped) City National Bank "7".

The Witness:

I say that I do not know what the check, Defendant's Exhibit 147 was given for. I have nothing to hide in this thing at all, you are accusing me of stealing and you know

very well that you would not stand on the street corner and make that statement to me, neither you nor Mr. Harrell, nor Les Humphrey, or any of the rest of you. I will be glad to look on the records and see if I can find anything with reference to the check for $427.50.

The contracts, the deed, in which we were to pay $10,000.00 the agreement on our part was that we paid $1,250.00 cash and $762.50 on the note, which made $4,012.50, we paid one note of $920.82. I think we are still carrying the other notes, two and three, on the records at this time. That check you handed me in the amount of $427.50, our ledger records show that on June 24, we owed $1,841.68 on the Porter Ranch, if it was our property, and I claimed it before I was trustee, however, as I told you, I could not tell you anything about this check for $427.50. Our books show we owed on June
1342 1, 1929 $1,841.68. This is the property that we tendered back in accordance with the rules that we might accept or reject, this much we elected to keep and those others we repudiated, that is my understanding of the decision handed down by the Supreme Court of the State of Texas. I think this is one we tendered back before the Supreme Court passed upon the case, in the original cross action. We have not paid those two notes. If this check for four hundred and some odd dollars given June 2, by George Peckham, was for part of those notes, we have not reimbursed George Peckham, I am sure, but I will make an effort to see if we have. We did send Knight and Hines a check on December 17, as our proportion. It seems that we had first attempted to get title to it, that was in George Peckham's name, as we understood it, I can't recall the details. I knew in November, 1929, when I was sending a check to Knight and Hines, that they had something to do with the property, and I found out where the title was after I begun to investigate, I think we claimed it up until in 1930, at least whether we claimed it or not, we didn't know what to do about it. The Porter Ranch is in territory that was prospective oil territory more or less, I don't think any

oil was ever found on it, but there was quite a few wells drilled on it at various times, it lies southeast of the Oldham pool, however, this was cut off from the Oldham pool by some dry holes, and there were a number of holes drilled on the Porter Ranch. Two of those notes are still unpaid as far as the royalty company is concerned. I will say that the Porter Ranch is in a likely territory.

1343 My recollection of the oil business in Archer County is that it is not entirely a structural proposition.

I think I have a copy of the deed to property No. 84, the Stephens Royalty. The acquisition of that royalty is shown by check No. 452, dated January 4, 1925, issued to G. W. Peckham in the amount of $5000.00 and reading, "Producing royalties, to purchase of royalty under the" —and there it stops. There is an ink notation on No. 84, in the handwriting of our bookkeeper—I think that should have been 1926, it is evidently a typographical error. The check was made payable to George Peckham. Defendant's Exhibit 8 is a conveyance from J. T. Harrell and C. E. Basham for one-fourth interest in and to one-eighth part of all the oil and gas produced and saved from the south forty acres of the north sixty acres of the west one-half of the northeast quarter of section 83, block 14, H&TC R. R. Co. Survey in Wilbarger County, Texas, the same being an undivided one-fourth of the one-eighth overriding royalty reserved in the assignments as above referred to, dated January 1, 1926. The consideration, $10.00 and other valuable considerations, to J. T. Harrell and C. E. Basham, cash in hand paid by Wichita Royalty Company. $26.00 in stamps, evidencing it was a $26,000.00 transaction, or more. No. 458, producing royalty No. 84, $5,000.00 check was payable to the City National Bank in that amount, that is January 11, Defendant's Exhibit 114, deposited to the credit of G. W. Peckham. The first check was to G. W. Peckham. Defendant's Exhibit 115, check No. 461, dated January 18, 1926, pay-

1344 able to the City National Bank in the amount of $15,769.07, and the voucher reads, in ink, No.

84, and in the original type, carbon, "To purchase of 1/4 of royalty under Stephens forty acres, operated by Staley, et al, and Barclay and Meadows, south Vernon field, total cost $25,769.07, less paid $10,000.00. Also notation, these checks Nos. 452 and 458. The revenue stamps would indicate that more than $25,000.00 was paid for that property, and our records reflect $25,769.07. In 1926, I think we notified the stockholders that we owned that property. The bulletin is dated March 19, 1927, in which we sent out a bulletin to the stockholders in which we listed this property. I will read it, "In Wilbarger County, we have purchased one-fourth of the royalty out of the Stephens land described as follows, north twenty acres of south forty acres of north sixty acres of west half of northeast quarter section 83, block 14, H & T C. R. R. Company Survey, operated by Barclay and Meadows. South twenty acres of the south forty acres of the north sixty acres of the west half of the northeast quarter Section 83, block 14, H & T. C. R. R. Co. Survey, operated by Humble Oil and Refining Company." And it continues, "Each of the above properties have ten wells, there are four producing sands in the south Vernon field in Wilbarger County, which accounts for the larger number of wells on these leases." I would not testify that each and all of the stockholders received these notifications, but as far as we could reach them, they were all told about it; there is about thirteen hundred stockholders and
1345 they shift around and some might not have gotten them. We mailed the notice to the last known address, to everyone as far as I know. As far as I know, we have never had any word from any of the stockholders about this purchase. In the same letter of March 15, 1927, to the stockholders, we again refer to Property 83 as follows, "The Oldham pool has recently been opened up on the farm offsetting the Porter Ranch, 1070 acres in which we own one-eighth of both the royalty and the land in fee. This pool will doubtless be extended over the Porter Ranch within a very short time." We obtained this property 84 direct from J. T. Harrell

and C. E. Basham. We checked the income on the Stephens Royalty and it was $21,527.30 in oil runs. This property was sold, and I do not have the date where or when it was sold, but I will be glad to look it up for you and get it all together. There is a memorandum in here, our check No. 279, our cash receipt memo April 1, 1930, we received $500.00, which reads, "Sales of W. H. Stephens royalty 1/4 of 1/8 overriding royalty in the Humble Oil and Refining Company twenty acres sold to the Humble Oil and Refining Company, Houston, Texas amounting to $500.00—that covers two twenty acre leases, the Humble bought one and Barclay and Meadows the other. As to the Barclay and Meadows deal, to read the whole deed and explain how I understand this thing, it recites, the Daniel Bond had more acreage than was sold that the Wichita Royalty Company got, and it says, "An undivided one-fourth interest in and to one-
1346 eighth part of all the oil and gas produced and saved from the south forty acres of the north sixty acres of the west half of the northeast quarter of Section 83, block 14, H & T C R R Co. Survey, Wilbarger County, Texas." I interpret that to mean we got forty acres and the forty acres was divided into two twenty acre leases. I am reading from Defendant's Exhibit 8. In addition to the five hundred dollars on 285, our cash memo Number, we got $2,750.00 more for the sale of the south twenty acres; the cash memo says, "Notes receivable, Barclay and Meadows, $2,750.00. We got that note and I turned it in to the bank and got credit for it, as I remember. This cash memo here has two dates on it, this date is July 14, 1930, in reference to Barclay and Meadows. There is an item of $125.00 that I believe that has either to do with the first sale—with the first piece of it, or with the second one, but I would like to have time to investigate that. I do not have a sheet showing what we paid for it, and what it cost, and what we got out of it all told, I think it will about balance out.

I have a check here dated January 5, 1926, J. T. Harrell and C. E. Basham, in the amount of $2,201.32, and it says

on the bottom of it, Vernon Royalty, signed by G. W. Peckham; check No. 59, dated January 25, issued to J. T. Harrell and C. E. Basham in the amount of $10,028.00, signed by G. W. Peckham, no notation on it. Plaintiff's Exhibit No. 70, another check, dated March 6, 1926, J. T.
Harrell and C. E. Basham, $5,060.00; then a check
1347 dated March 31, 1926, J. T. Harrell and G. W.
Peckham in the amount of $5,087.00, signed by G. W. Peckham. I figure that G. W. Peckham paid J. T. Harrell $22,376.32, the total of those four checks. I don't know whether there were any more checks given or not. As to whether we collected any royalty off of this property in January, 1926—I think in the list of checks that you asked me to look up, is a check from George Peckham, dated January 30, 1926, to the Wichita Royalty Company, marked "Runs for the first half of January, Stephens Royalty, in the amount of $1,235.99," and our oil run ledger shows that we received $522.03 off of the Staley-Winn, or Humble lease, and $713.96 off of the Barclay and Meadows lease, which totals $1,235.99; and that on February 18, 1926, you asked me to look up a check of $1,103.13, which was made payable to the Wichita Royalty Company and is marked "Runs on last half of January, Stephens Royalty." Our oil run records show that on the Staley-Winn or Humble lease, we received $403.39 for the period January 16, to January 31, and on the Barclay and Meadows lease for the period January 16, to January 31, $699.74, which makes up the total of the checks, $1,103.13. During the month of January, 1926, our records show that this royalty was producing this 1/8th—over $2,300.00 per month, that is, the part coming to the Wichita Royalty Company. We began to receive oil runs effective the first of January, and it was valuable property at that time, it paid out in approximate-
ly eleven months. It was an overriding royalty.
1348 Not one time, to my knowledge, since then, have the stockholders ever repudiated this transaction, or any stockholders. Myself and my lawyers have asked for an accounting.

Mr. Rogers:

We want to offer these oil runs in evidence, Defendant's Exhibit 148.

1349 DEFENDANT'S EXHIBIT 148.

Roy 84 Stephens

From	To		Amount
1-1-26	4-30-26	Sales Oil Staley (See note below)	$ 3481.32
1-1-26	4-30-26	Sales Gas Staley	63.43
1-1-26	5-31-26	Sales of Oil Barkley & Meadows (See note below)	5598.71
1-1-26	5-31-26	Sale of Gas Barkley & Meadows	76.16
4-1-26	2-28-27	Sale of Oil Staley (See note below)	2797.18
4-1-26	2-28-27	Sale of Gas Staley	67.48
6-1-26	5-31-27	Sale of Oil Barkley & Meadows	5000.16
6-1-26	5-31-27	Sale of Gas Barkley & Meadows	107.92
6-1-27	5-31-28	Sale of Oil Barkley & Meadows	2277.40
6-1-27	5-31-28	Sale of Gas Barkley & Meadows	44.89
6-1-28	5-31-29	Sale of Oil Barkley & Meadows	1790.58
6-1-28	5-31-29	Sale of Gas Barkley & Meadows	54.15
6-1-29	3-31-30	Sale of Oil Barkley & Meadows	1140.22
6-1-29	3-31-30	Sale of Gas Barkley & Meadows	27.70
Total to 4-1-1930 when Royalty was sold to Humble Oil & Ref. Co. and Barclay & Meadows			$21527.30

Note: Included in total of 3481.32 is ck of GWP Dated 2-10-26 for 522.03—is ck of GWP Dated 2-24-26 for 403.39.

Included in Total of 4598.71 ck of GWP Dated 2-10-26 713.96 ck of GWP Dated 2-24-26 699.74.

1350 The Witness:

In addition to these checks which I have figured up, that J. T. Harrell and C. E. Basham received from G. W. Peckham between January 15, 1926 and March 31, 1926, I have since learned, since the filing of this in 1931, that G. W. Peckham conveyed to J. T. Harrell and C. E. Basham certain interest that he had in property known as the Curlee tract of land out east of town, which is represented by Plaintiff's Exhibit 74, dated January 23, 1926. It seems that on the Wichita Royalty Company deed it was originally the first of January, that the acknowledgment was written, but it is over-dated, what looks to be the 28th of January. The royalty deed has been in my possession, filed for record February 9, 1926. The lady who took the acknowledgment could tell you more about that overdating than I can, the certified copies from the deed record shows the 28th, they assumed that was the day it was acknowledged. I am not trying to cast any aspersion on George Peckham, I am just telling you what it shows. I do not know what this Curlee land was sold for, or taken in by Harrell and Basham for. That is one of the transactions we originally sued on and are still suing on.

The next one is No. 85, I hand you a check No. 541, for $10,000.00, payable to the City National Bank, dated October 13, 1926, our voucher reads, "Covers No. 85, 86, 87, 88, 89, 90, 91 and 92, which was the Gray County interest." I am sure that is the deeds for it, I do not have them here, they have been misplaced, I think they are in the record.

1351 Mr. Boone:

We offer the check in evidence.

DEFENDANT'S EXHIBIT 149.

Wichita Royalty Company, Wichita Falls, Texas No. 541 October 13. 1926. When properly indorsed pay to

the order of City National Bank $10,000.00 "8" To the City National Bank, Wichita Falls, Texas (41) circled. Wichita Royalty Company, By E. E. Scannell for trustee (in pencil) 85 to 92 Perforated Paid 10-14-26.

The Witness:

The defendant's Exhibit 149 covers properties 85 to 92 inclusive, payable to the City National Bank. Plaintiff's Exhibits 31, 32, 33, 34, 35, 36, 37 and 38, constitute conveyances to those respective pieces of property; each of these conveyances were made from George Peckham to the Wichita Royalty Company.

Agreement: Mr. Rogers:

It is agreed that the instrument Mr. Boone has in his hand, although a carbon copy, is in fact the original second amended original answer and cross action and interpleader of the Wichita Royalty Company filed September 14, 1934, in Cause No. 24549-B, and is substantially the same pleading as filed in the early part of 1931, except that in this amendment filed in September, 1934, the City National Bank in Wichita Falls, Texas was made a party.

Mr. Boone:

It is further agreed that substantially the same allegations in paragraph 20 of this petition were in the original petition filed in 1931.

1352 The Witness:

All of these deeds were filed within the month of December, and all of them were executed within that month, 1926, they have been in possession of the Wichita Royalty Company up until this lawsuit was started, and the records show what we paid for it on the books of the concern. When we filed this lawsuit in 1931 and refiled it again in 1934, we elected to rescind this entire transaction of all of the Wheeler and Gray County properties.

85 to 92 inclusive, at that time I don't think the properties were worth what we paid for them. Since we filed the first amendment, as well as since we filed the original cross action, the properties have become valuable. We first repudiated the transaction, and now elect to keep them, because they are profitable, even though they came direct from George Peckham. We tendered the properties back and asked for our money back but who it was to come from would be determined by the Court, as I understand it. The check in payment of these properties went directly to the City National Bank, payable to that bank. I have not read the petition, but we offered to tender it back and to do whatever was necessary in regard to getting our money back. I heard Guy Rogers, in open Court, make the following declaration, while I was on the witness stand testifying about this property, "disclaiming any interest in the Wichita Royalty Company or its stockholders, in and to any of the properties, which by the testimony of the bank, it has been suggested these moneys were to pay for, and if a portion of the
1353 properties, I assume, that are covered by the deed that I last offered, in other words, we are tendering and having during all of the time, disclaimed any interest in and to all of the Gray County stuff, and we ask for the $10,000.00 on it." That statement was made by my lawyer, Guy Rogers, when we tried this case in 1932.

Mr. Boone:

We offer at this time paragraph 20 of the amended petition filed by the Wichita Royalty Company on September 14, 1934.

Mr. Rogers:

I offer the entire petition in evidence.

1354 (Said instrument marked "Defendant's Exhibit 150" and the petition, including Paragraph 20, offered by Mr. Boone, reading as follows:)

DEFENDANT'S EXHIBIT 150.

In the 78th District Court of Wichita County, Texas.

The City National Bank of Wichita Falls, Texas,
vs. No. 24,549-B.
Wichita Royalty Company, et al.

To the Honorable Judge of said Court:

Subject to and without waiving pleas and dilatory matters heretofore filed and pleading in due order, come now Wichita Royalty Company, a joint stock association operating under a declaration of trust filed in Wichita County, Texas, and E. E. Scannell, Trustee and one of the some thirteen hundred (1300) stockholders of Wichita Royalty Company, who joins herein for himself and all other stockholders of said company, hereinafter called cross complainants, and with leave of the Court first had and obtained, file this their second amended original answer, cross action and interpleader in lieu and in amendment of the original pleading filed December 5, 1930, as amended by pleading filed February 14, 1931, so that the same shall read as follows:

1355 1.

Come now Wichita Royalty Company, a joint stock association operating under a declaration of trust filed in Wichita County, Texas, and E. E. Scannell, its Trustee and one of said some thirteen hundred (1300) stockholders of Wichita Royalty Company, who joins herein for himself and all other stockholders of said company, herein called cross complainants, in answer to plaintiff's first

amended original petition, as well as in cross action against the plaintiff, The City National Bank of Wichita Falls, Texas, and its successor, The City National Bank in Wichita Falls, Texas, both National Banking Corporations with principal place of business in Wichita County, Texas, and by way of interpleader against J. T. Harrell, W. H. Peckham, as administrator of the Estate of G. W. Peckham, deceased, William Peckham and George Peckham, minor sons of G. W. Peckham, deceased, and Mrs. Hazel Peckham, surviving wife of G. W. Peckham, deceased, each a resident citizen of Wichita County, Texas, and for answer, cross action and interpleader cross complainants say:

2.

Except as herein specifically amended, cross complainants deny all and singular each and every averment of fact in plaintiff's said amended petition contained, demand strict proof thereof, and with respect thereto put themselves upon the country and ask thereon a determination thereof by a jury.

3.

Pleading non est factum to the instruments declared upon by plaintiff, cross complainants say that neither of said obligations herein sued on by plaintiff was executed by or with authority from Wichita Royalty Com-
1356 pany, nor for its primary use and benefit; that Wichita Royalty Company is neither the maker nor indorser nor otherwise a party to nor bound by any instrument and/or obligation sued on; that if in fact anyone signed the Wichita Royalty Company's name to any of the instruments sued on, the same was wholly inoperative against the association as no one had authority to bind the company thereby for the purposes, under the circumstances and upon the facts existing at the time; that as will hereinafter more fully appear, Wichita

Royalty Company has received no consideration for the execution of any of the instruments sued on by plaintiff that the same were executed solely and only for the personal benefit of and inured but to the advantage of G. W. Peckham, the bank and the officers of the bank negotiating for the original execution and subsequent renewals of the obligations declared upon by plaintiff; that monies originally advanced by the plaintiff upon notes originally executed in the name of the royalty company so that the borrowing trustee might obtain personal funds therefrom, have all been repaid to and received by the plaintiff as a matter of law, as well as of fact; and that the plaintiff and the impleaded defendants are indebted to Wichita Royalty Company in the amounts, from the times and upon the fact hereinafter shown.

4.

That at all times the plaintiff bank, its officers, agents and employees, knew each and every fact herein
1357 elsewhere pleaded, and were charged by law with knowledge thereof upon and under such facts so averred.

5.

The declaration of trust creating Wichita Royalty Company and which in and of itself was and is the charter of the Trustee's power, gives to the trustee thereunder general authority but to carry out the purposes of the trust shown by the articles of agreement to be solely and only the purchase and sale of oil and gas royalties and other oil and gas properties. It is therein provided that the title to all property acquired or to be acquired from time to time by the trust and all investments thereof should be made and held in the name of the Trustee as such, and that the Trustee shall hold all of the funds and property of the trust as Trustee with the powers and sub-

ject to the limitations declared in the declaration, shown to limit the powers of the Trustee to dealing in oil and gas business.

6.

G. W. Peckham was such Trustee from 1923 until his death in 1929. He was extensively engaged in private business aside from that of trustee. Doing business with the plaintiff bank during this period, he carried his personal account in his own name therein and the trust account in the name of Wichita Royalty Company. Upon Peckham's death, E. E. Scannell became and now is substitute Trustee, succeeding after Peckham's death to the powers and duties theretofore vested in the said G. W. Peckham. During the period beginning October
1358 8, 1925 and ending November 12, 1929, G. W. Peckham drew forty-nine (49) checks on the funds deposited in the plaintiff bank to the credit of Wichita Royalty Company, aggregating the sum of $134,-712.14, the checks being signed by him as Trustee for Wichita Royalty Company, and after his death seven (7) additional checks were drawn on the same account by Scannell as Trustee, aggregating $10,055.42. Forty-five (45) of the checks drawn by Peckham aggregated $119,-473.98 and were made payable to the order of the plaintiff bank upon which they were drawn, and four checks totaling $9,283.16 were in favor of G. W. Peckham personally. The Trustee was given personal credit on the books of the plaintiff bank for these forty-nine (49) checks and were paid out upon his personal order upon his private checks for personal purposes, some to pay the plaintiff bank on personal obligations due by Peckham as an individual, and some to pay Peckham's various and sundry personal debts.

7.

All checks were upon voucher form. One check is here now reproduced as an example of all. That which is underscored was written into the printed form of the check:

Remittance Advice.

Attached hereto is our check in full settlement of the items listed below. If not correct please return with explanation.

WICHITA ROYALTY COMPANY.

Description	Detail	Total
Notes Payable:		
To apply on note held by City National Bank		*$1,500.00*

Detach here before depositing check.

..... (Perforation) .....

Wichita Royalty Company,
Wichita Falls, Texas.

August 16, 1927. *No. 635.*

When Properly Indorsed Pay to the Order of *City National Bank $1,500.00, Exactly One Thousand Five Hundred Dollars No Cents.*

WICHITA ROYALTY COMPANY.
By *G. W. PECKHAM*, Trustee.

To The City National Bank,
Wichita Falls, Texas.

On the back of checks as and when presented and above the place of usual indorsement were printed these words:

"Indorsement hereon by the payee constitutes acknowledgment of full payment of the items listed on accompanying remittance statement. No other receipt required."

XVI.

These checks were deposited by the bank to the personal account of the drawing trustee, and a corresponding charge made against the trust deposit, the bank well

knowing that the fund was a trust fund and was being improperly diverted from the trust account to the personal account of the trustee of such fund by being deposited to the credit of an account which the bank knew G. W. Peckham was using solely for personal pur-
1260 poses.

XVII.

There now follows a list of checks drawn upon the trust deposit with the plaintiff bank, wherein is given the check number, the date, the amount, the payee, to whom credit was given, and voucher notation, each item being charged to have been an accomplished misappropriation of trust funds by the trustee through the facilities and upon the active participation of plaintiff bank, to-wit:

Check No.	Date	Amount	Payee	Credit Given	Voucher Notation
427	10- 8-25	$ 5,500.00	Bank	Peckham	Purchase royalties
451	12-28-25	1,250.00	Bank	Peckham	Producing royalties
452	1- 4-25	5,000.00	Peckham	Peckham	Producing royalties
458	1-11-26	5,000.00	Bank	Peckham	Producing royalties
461	1-18-26	15,769.07	Bank	Peckham	Stephens Royalty
478	3- 6-26	17,623.70	Bank	Peckham	Marlborough Purchase
479	3- 6-26	6,000.00	Security	Peckham	Marlborough Purchase
485	3-31-26	7,500.00	Bank	Peckham	Marlborough Imp'mnt.
495	3-23-26	300.00	Bank	Note	Interest to Bank
503	5-20-26	3,000.00	Peckham	Peckham	Marlborough Imp'mnt.
506	5-29-26	500.00	Bank	Note	Interest to Bank
507	5-29-26	1,500.00	Bank	Peckham	Marlborough Imp'mnt.
510	6-16-26	4,500.00	Bank	Peckham	Marlborough Imp'mnt.
519	7-13-26	1,000.00	Bank	Peckham	Marlborough Imp'mnt.
521	7-16-26	300.00	Bank	Note	Interest to Bank
525	8- 2-26	4,000.00	Bank	Peckham	Highland Ir. Co. Note
531	8-27-26	500.00	Bank	Note	Interest to Bank
532	8-27-26	4,357.58	Bank	Peckham	Highland Ir. Co. Note
540	10-13-26	300.00	Bank	Note	Interest to Bank
541	10-13-26	1,000.00	Bank	Peckham	Royalties Wheeler and Gray Counties

Check No.	Date	Amount	Payee	Credit Given	Voucher Notation
550	11-20-26	7,500.00	Bank	Peckham	Purchase royalties
554	12- 2-26	1,500.00	Bank	Peckham	Royalties and fee
556	12-26-26	700.00	Peckham	Highland	Highland Ir. Co. Note
556-A	12-22-26	538.16	Peckham	Highland	Highland Ir. Co. Note
557	12- 7-26	1,920.00	Bank	Draft	Purchase royalties
569	1-11-27	300.00	Bank	Note	Interest to Bank
571	1-19-27	2,000.00	Bank	Peckham	Marlborough Imp'mnt.
579	2-19-27	2,500.00	Bank	Peckham	Marlborough Imp'mnt.
582	3- 1-27	500.00	Bank	Peckham	Interest to Bank
583	3- 1-27	301.82	Bank	Peckham	Purchase royalties
584	3- 1-27	500.00	Bank	Note	Interest to Bank
591	3-23-27	2,000.00	Bank	Peckham	Purchase royalties
599	4-14-27	300.00	Bank	Note	Interest to Bank
615	6- 8-27	500.00	Bank	Note	Interest to Bank
630	6-18-27	1,200.00	Bank	Peckham	Note to Bank
628	7-16-27	1,500.00	Bank	Note	Interest to Bank
635	8-16-27	1,500.00	Bank	Peckham	Note to Bank
650	10-14-27	2,400.00	Bank	Peckham	Note to Bank
657	11-25-27	1,800.00	Bank	Peckham	Interest to Bank
682	1-18-28	2,000.00	Bank	Note	Note to Bank
710	4-20-28	1,850.00	Bank	Peckham	Note to Bank

717	5-17-28	220.00	Bank	Note	Interest to Bank
721	6- 1-28	424.66	Bank	Note	Interest to Bank
733	7-23-28	220.00	Bank	Note	Interest to Bank
752	9-27-28	424.66	Bank	Note	Interest to Bank
768	12- 4-28	2,000.00	Bank	Note	Note to Bank
791	2-19-29	1,500.00	Bank	Note	Note to Bank
814	6- 7-29	1,500.00	Bank	Note	Note to Bank
824	7-15-29	212.49	Bank	Note	Interest to Bank
836	8-30-29	1,000.00	Bank	Note	Note to Bank
856	11-23-29	1,500.00	Bank	Note	Note to Bank
880	1-24-30	1,500.00	Marlborough	Tex. Inv. Co.	Loan
890	2-24-30	1,000.00	Bank	Note	Note to Bank
898	4-10-30	1,000.00	Bank	Note	Note to Bank
908	5-13-30	500.00	Tex. Inv. Co.	Tex. Inv. Co.	Marlborough Note
920	6-14-30	1,500.00	Bank	Note	Note to Bank
930	7-14-30	3,055.42	Bank	Note	Note to Bank
Total		$144,767.56			

1363- 10.

Additional to the above, and as a further misappropriation, the trustee Peckham sold two properties belonging to the trust and received therefore the aggregate of $12,-048.00, $6,000.00 thereof being evidenced by cashier's check and deposited to the personal account in the plaintiff bank, of G. W. Peckham and by him used for his own personal benefit. The remaining $6048.00 was paid by the purchaser of the trust property under escrow contract between Wichita Royalty Company and the purchaser, deposited in the plaintiff bank as escrow agent, with executed conveyance to be surrendered to the purchaser upon the payment of $6,000.00 and interest, as evidenced in writing deposited with the plaintiff bank. The purchaser paid into the escrow the total of $6048.00 by checks payable to the plaintiff bank, which the bank, well knowing the money to be trust money, deposited to the personal account of G. W. Peckham and which was by him misappropriated.

11.

During the period of time covered by the transaction above, the bank received from G. W. Peckham upon his personal indebtedness to it $57,764.21, said payments being made to the bank from the personal account of G. W. Peckham with the bank to which the above funds had been credited, and but for the credit of which trust funds such payments could not all have been made, and at the very outset of the series of misappropriations, the defaulting trustee diverted trust funds from Wichita Royalty Company's account to his individual account so that he could, as he did, pay therefrom the bank upon his individual debt.

1364 12.

The perforation on each check and the notation on the back thereof advised the bank that the check as and when

presented was a voucher check and that attached thereto when issued was a voucher upon which was written the purpose thereof, and the bank was thus referred to matters of writing wherefrom it affirmatively appeared that each of the several checks now declared upon was issued for other than a trust purpose, but a purpose personal to the trustee and involved in a transaction wherein the trustee was personally interested, and in the consummation of which there was a breach of trust facilitated through the bank's charging the trust deposit and crediting the trustee's personal account.

13.

Each of the charges against the trust deposits and credits to the personal account of the drawing trustee was made at a time when the personal account of the trustee had been all but exhausted and he was indebted in large amounts to the plaintiff bank.

14.

The impleaded defendant, J. T. Harrell was, during the period of these several transactions, the active officer of the plaintiff bank who negotiated with G. W. Peckham certain loans hereinafter described; a substantially large part of his loans were first deposited to the trust
1365 account and therefrom diverted to the personal account of the drawing trustee so that such trustee as an individual might, as he did, pay to the loaning banker upon Peckham's personal debt.

15.

The $22,000.00 note sued on by the bank was but in renewal of a $15,000.00 note dated January 18, 1926 and a $25,000.00 note dated March 1, 1926. The 1926 loans

were negotiated by G. W. Peckham through J. T. Harrell for the bank:

(a) On January 18, 1926, J. T. Harrell credited the trust deposit with $15,000.00 and charged the trust liability ledger therewith, Peckham executing Wichita Rolyalty Company's note therefor. That date Peckham personally owed the bank $28,050.00 plus accrued interest. Peckham and Harrell were jointly and severally liable to Highland Irrigation Company for $15,895.00 plus interest as the unpaid purchase price of Marlborough Addition, their liability interest being one-fourth each. Theretofore, Peckham had caused to be issued trust checks Nos. 452 and 458, dated January 4th and January 11, 1926, respectively totaling $10,000.00, causing the voucher records to show the purchase of royalty and receiving personal credit therefor at the bank. On January 18, 1926, the date of the loan, Peckham issued trust check No. 461 for $15,769.07, made payable to the bank, receiving personal credit therefor the same day the bank charged the trust with the $15,000.00 loan. The notation on voucher No. 461 showed the $15,769.07 check to be the balance of the $25,769.07 purchase of one-fourth royalty
1366 under Stephens 40 acres and referred to checks Nos. 452 and 458 for $5,000.00, previously paid. The Stephens royalty was owned by J. T. Harrell and C. E. Basham, both active officers of the plaintiff bank. One-half of this royalty was sold to G. W. Peckham by deed dated November 9, 1925 and filed for record November 16, 1925. Later on, and as a separate transaction, the other one-half of the Stephens royalty was sold by Harrell and Basham for an agreed consideration of $22,407.00, the deed being dated January 1, 1926, acknowledged January 28, 1926, revenue stamps canceled February 2, 1926 and filed for record February 4, 1926. Seven days after the $15,000.00 loan and the diverting of $15,769.07 to the personal account of G. W. Peckham and before another deposit was made to Peckham's personal account, Peckham issued his personal check on his private account

for $10,028.00, payable to J. T. Harrell and C. E. Basham in part payment for the Stephens royalty sale. But for the tranfer of this $15,769.07, Peckham's personal balance would have been but $1084.04 when the bank paid Harrell and Basham the $10,028.00, in payment of his private debt. The difference between the $25,769.07 transferred from the trust account to the personal account of the trustee and shown trust books to be in payment of Stephens royalty, and the $22,407.00 sale price by Harrell and Basham makes the trustee's personal profit $3,362.07. This $15,000.00 loan was made by Harrell personally. He personally made the royalty sale. It is the custom of banks and bankers, and was at that time, that
1367 when a loan of this size is made, the purpose of the loan is always inquired into, the purpose of this loan being to obtain for Peckham personally funds with which to pay the loaning banker, Harrell, and his copartner, C. E. Basham, an active officer of the bank. Although at the time, the trust had lots of property and owed no debts, still the loan being intended for the personal benefit of G. W. Peckham, J. T. Harrell required that G. W. Peckham indorse the note personally. The trust now charges that this $15,000.00 loan so made between Harrell and Peckham was for the purpose of G. W. Peckham being able at a time when his personal credit was exhausted, to use trust credit so that he might obtain money to divert to his personal account and therefrom pay in part a private debt to the loaning banker, a part to pay the bank itself a private debt, the balance to be paid to Peckham's personal creditors, and all of the facts and circumstances to be kept and concealed from the stockholders. Trust checks in excess of the deposited loan were subsequently honored by the bank to which they were payable in sufficient amounts to discharge this credit.

(b) On March 1, 1926, the impleaded defendant, Harrell, for the bank, credited the trust deposit with $25,000.00 and charged the trust on its liability ledger therewith, receiving the trust note therefor executed by G. W.

Peckham. That day Peckham personally owed the bank $28,050.00 plus interest. His deposit balance was $341.90. He and Harrell were jointly liable to Highland Irrigation
Company for $51,895.00 plus interest as the un-
1368 paid purchase price of Marlborough Addition
bought September 25, 1925 and platted as an Addition December 4, 1925. Sales of lots were active on a start but economic conditions changed and sales slowed up. It was then necessary to spend large sums of money for the improvement of Marlborough addition. Thus on March 1, 1926, Peckham negotiated a loan with Harrell, both being partners in Marlborough Addition, and good friends. Harrell issued the bank's deposit slip for $25,000.00, thus crediting the trust account and charging its liability ledger. That same day Peckham issued his personal check for $11,811.85 to his brother, who was another partner in Marlborough Addition, the payment being for an additional one-fourth interest in Marlborough Addition, making Peckham's personal interest in such Addition one-half thereof. Peckham's personal balance of $341.90 the morning of March 1, 1926 was insufficient to clear the $11,811.85 check drawn thereon payable to Peckham's brother. The deposit balance of the trust that morning was $11,657.94, which during the day was increased to $35,657.94 by the $25,000.00 credited loan. Before another deposit and on March 6, 1926, Peckham issued trust checks Nos. 478 and 479, the first for $17,623.70 drawn on and payable to the plaintiff bank, presented same to the bank and received personal therefor; the other for $6,000.00 payable to Security National Bank, where Peckham received personal credit. The day of this simulated transfer of trust funds to the extent of $17,623.70 from the trust account to the personal account of
the drawing trustee and before another deposit
1369 therein and but the fifth day after Harrell's $25,000.00 loan to Peckham, G. W. Peckham issued his personal check for $5060.00, payable to J. T. Harrell and C. E. Basham, which was paid the same day and credit was given by the bank therefor, one-half to Harrell

and one-half to Basham. But for this $17,623.70 transfer of the proceeds of the $25,000.00 loan, the personal account of G. W. Peckham would have been $125.20, when in fact Harrell cashed the $5060.00 personal check of G. W. Peckham in payment of a private debt. On the 9th day of March, Peckham's brother cashed his $11,811.85 check. The check No. 478, on its face, when presented and cleared referred to a voucher which showed the purpose of its issuance to the purchase of G. W. Peckham's one-half interest in Marlborough Addition for a set up consideration of $49,566.20, represented by $23,623.70 cash paid by checks Nos. 478 and 479, and subject to $23,-215.50 due Highland Irrigation Company. Peckham had paid in cash at the time of his original purchase of a one-fourth interest, $4723.75. After March 6, 1926, Peckham personally received trust funds totaling $31,596.74 entered upon the books as improvements to Marlborough Addition, and personally expended thereon but $27,000.00, a further difference of $4,596.74 in his favor, or a total profit of $7,088.10 to Peckham's brother personally, and $11,-684.84 to Peckham personally, in a transaction where Peckham assumed the dual role of dealing as an individual with himself as trustee. At a profit to himself personally, without notice to or knowledge by the stockholders from whom all transactions were carefully and methodically concealed, and the checks being payable to the bank was but a part of the fraudulent plan to conceal. J. T. Harrell made the $25,000.00 loan. He was still Peckham's partner in the Marlborough Addition and his personal friend. He was a banker with long experience and it was customary for banks and bankers to inquire the purpose of a loan of that size, which loan was made for the purpose of inuring to the benefit of the trustee himself, the loaning banker, the bank and the personal creditors of the drawing trustee. Peckham was personally required to indorse the note. This original loan was made with Harrell so that Peckham with an exhausted personal credit might use trust credit so that he might divert monies from the trust deposit to his personal

1370

account in profit to himself, the bank and the loaning banker might profit in the transaction where he was both purchaser and seller, and assuming a dual position in breach of trust, all known to but condoned by the bank, its agents, servants and employees.

16.

Subsequent to the execution of the above 1926 notes, and in addition to admitted credits thereon from trust funds, there was paid thereon items totaling $11,250.00, with which such notes were not credited and which aggregate sum was not given the effect of payment upon any renewal so that the last renewal of said 1926 transactions were without consideration to the extent of said several payments. This $11,250.00 is represented by checks totaling such amount, of which the check reproduced
1371 above is one, all being drawn on and payable to the bank's order, and when presented referred by writing thereon to an accompanying remittance advance showing each check to have been issued to apply upon the trust's note payable to the bank. The proceeds of these checks, instead of being applied to the indebtedness of the trust to the bank, were credited to Peckham's personal account and withdrawn therefrom upon his private check to pay his individual debts and by him misappropriated. During Peckham's life he caused trust books to show its bank liability to have been reduced by such amounts through himself renewing the bank's note from time to time without either of such credits. Upon Peckham's death, the substitute trustee as a part of a plan to cover up Peckham's fraud, and further to conceal from the stockholders the true facts, changed trust books to conform to the bank's book and renewed the note without such credit. Peckham in his lifetime paid from his personal account $6,821.22 upon the trust's note, yet the trust has elected, and now elects to credit such item, first, upon the misappropriation evidenced by the $6,-

000.00 check drawn on the plaintiff bank payable to the order of the Security National Bank, deposited to Peckham's personal credit with the Security National Bank, and therefrom misappropriated by the trustee, crediting the balance upon the earliest maturing misappropriation of the trustee.

1372 17.

Through a joint participation of the bank and the trustee $53,740.89 was misappropriated upon checks for the most part payable to the bank's order and overdrawn on the trust deposit account with the bank, and by the bank charged against the trust deposit and credited to the personal account of the drawing trustee and therefrom disbursed upon the personal check of G. W. Peckham, some to pay the bank his private debt, some to pay bank officers an individual obligation and all for purposes other than the trust. To simulate regularity and as a part and plan of his system to fraud and conceal, the trustee caused such checks for the most part to be made to the bank's order and caused trust checks to reflect the purpose of said checks totaling said aggregate amount to be for the purchase by the trust of certain mineral interests but the stockholders were not advised, nor the checks of the trust did not show, that Peckham had a personal interest in all of such transactions.

18.

During his trusteeship, Peckham was extensively engaged in the purchase and sale of oil properties as an individual and in his own right. He would generally buy properties near development in the vicinity of a drilling well and at a time and under circumstances when the value of properties in the locality was of a highly speculative and fluctuating value. These properties he would buy with his own money and take title thereto in his own name and during the period of the fluctuating value

and at a time when it appeared that the interest so bought was of little or no value, he would thereupon exe-
1373 cute an instrument of conveyance from himself as an individual to his trust at a consideration fixed by himself sometimes for the exact amount of money that he paid for the interest and sometimes at a price whereby he would personally profit, but at no time did he have the prior consent or subsequent approval of those whose moneys and properties he held in trust.

19.

Thus the trust books were caused to reflect the purchase of properties for the aggregate amount of $53,740.89, but such trust books did not show that these properties had been bought by Peckham as trustee from himself as an individual. Of the properties so reflected by trust books as having been purchased by the trust and conveyed by Peckham to the trust, he only owned properties representing $45,740.89, while trust books and vouchers described other properties of a value of $8,000.00, which were never owned by Peckham, and which the trust never received. In other words, Peckham himself as an individual owned properties which he sold and conveyed to the trust for a set-up book value of $45,740.89 which he himself received, while he also set-up on the books as properties acquired by the trust $8,000.00 paid to him as an individual for properties which Peckham did now own, and which the trust did not receive; all of the properties (except Stephens Royalty) were practically valueless during Peckham's lifetime, none of them having produced a drop of oil.

1374 Peckham was never unfair to himself when acting in the dual capacity of buyer and seller. His every sale as an individual and purchase as a trustee was without the prior consent or subsequent knowledge of those for whom he was acting in a fiduciary capacity,

all of the facts being concealed during Peckham's life and by the substitute trustee until immediately before filing the suit.

20.

With respect to all of such properties so conveyed, or supposed to have been conveyed by G. W. Peckham as an individual to his trust, cross complainants have elected to repudiate as nullities and with respect to same make such tenders and offers due equity as in good conscience required, such transactions being in connection with checks listed above and numbered 427, 451, 452, 458, 461, 541, 550, 583 and 591, and concerning the following properties:

a. The East 30 acres of a 71 acre tract of the Milligan Survey, Callahan County, Texas, more particularly described in a deed recorded in Vol. 103, at page 150, of the Deed Records of said County.

b. 1070 acres known as the Porter Ranch in Archer County, Texas.

c. Marlborough Addition to the City of Wichita Falls, Texas, and/or its corporate successor, the Texas Investment Company.

d. All properties in Gray and/or Wheeler Counties, Texas.

1375 e. East 1/2 of Lot 10, North Anderson Ranch, Archer County, Texas.

f. Southwest 60 acres of the E. Polk Land, Abstract 717, William Polk Preemption Survey, Archer County, Texas.

21.

Typical of the way and manner in which Peckham dealt with himself as an individual and himself as trustee, were his transactions behind trust check No. 541 for $10,000.00,

which was drawn on and payable to the plaintiff bank and deposited to the personal account of the drawing trustee. Between October 20, 1926 and December 7, 1926, Peckham personally bought mineral and/or royalty interest in Gray and Wheeler Counties, Texas, for an aggregate consideration of $44,800.00. He sold certain tractional interest thereof to United Royalty Company, to Tolowa Royalty Company, Wotola Royalty Company, Murchison & Fain and J. T. Harrell, conveying certain fractional interests thereof to his own trust and retaining a substantial interest therein himself, his profit in the entire transaction being $17,700.00. He directed the bookkeeper to enter upon the books of the trust that the $10,000.00 check theretofore issued, represented the trust's purchase of these Gray and Wheeler County properties, and though he had advised the stockholders that the property had been acquired, he did not advise the stockholders that he, as an individual, had sold the properties to the trust at a profit to himself, nor did he advise the stockholders that he had retained in his own name title
1376 to an interest in the certain respective properties which he was holding in trust for Wichita Royalty Company, such intent to hold in trust such properties additional to those actually conveyed being evidenced by a memorandum in his own handwriting in words and figures as follows, to-wit:

"Bought Wheeler County royalty for $44,800.00—Paid as follows, Webb $5400.00, Johnson $4,000.00, Noel, $5,000.00, Section 57, $8400.00, Section 43 $2,000.00, Section 44, $4,000.00, Plummer $8,000.00, Section 12 was $8,000.00, sold Tolowa $30,500.00, sold Joe Art $1,000.00, sold J. T. Harrell $1,000.00, sold United Royalties $20,000.00, sold balance to Wichita Royalty Company for $10,000.00, which was exact cost paid."

22.

Thus is evidenced Peckham's secret intent to hold in trust for Wichita Royalty Company the title to and pos-

session of all the properties so bought in Gray and Wheeler Counties, Texas, which had not been sold to others, although he did not in fact convey to the trust but a portion thereof. With respect to this matter, the trust says in the first place that the transaction is not binding upon it, and that it should recover the $10,000.00 misappropriated by Peckham through check No. 541 with bank's participation and through its facilities, but if for any reason said transaction be binding upon the trust, in such event, but only in such alternative, the trust says that Peckham held in trust for it those mineral in-
1377 terests situated in Gray and Wheeler Counties, Texas, described as follows:

Wheeler County.

a. 1/128 plus 15/32 mineral interest as royalty in the NE 1/4 of Section 47, block 24, H & GN Ry Co. Survey, Wheeler County, Texas.

b. 1/256 plus 1/64 mineral interest as royalty in the W 1/2 of the SE 1/4 of Section 43, Block 24, H & GN Ry. Co. Survey, Wheeler County, Texas.

c. 1/256 plus 15/64 mineral interest as royalty in the E 1/2 of Section 54, Block 24, H & GN Ry. Co. Wheeler County, Texas.

d. 1/16 mineral interest as royalty in the NW 1/4 of Section 44, Block 24, H & GN Ry. Co. Survey, Wheeler County, Texas.

e. 1/16 mineral interest as royalty in the N 1/2 of Section 45, Block 24, H & GN Ry. Co. Survey, Wheeler County, Texas.

f. 1/16 mineral interest as royalty in E 1/2 of Section 57, Block 24, H & GN Ry. Co. Survey, Wheeler County, Texas.

Gray County.

a. 1/4 mineral interest as royalty in W 1/2 of the SE 1/4 and the NE 1/4 of the SE 1/4 of Section 59, Block 25, H & GN Ry. Co. Survey, Gray County, Texas.

b. 1/8 mineral interest as royalty in S 1/2, Section 61, Block 25, H & GN Ry. Co. Survey, Gray County, Texas.

1378 c. 1/64 mineral interest as royalty in NW 1/4, Section 60, Block 25, H & GN Ry. Co. Survey, Gray County, Texas.

The trust says that if for any reason it cannot repudiate this transaction between himself as trustee and himself as individual, that it should have judgment for the title to and possession of said lands and premises.

23.

A portion of the misappropriation by the trustee Peckham was accomplished through the facilities of the bank upon checks for the most part payable to the bank's order, aggregating $55,219.44, which the trustee caused his books to show as the purchase price and improvement cost of what is known as Marlborough Addition, but which transactions were carefully withheld and concealed from the stockholders. The vouchers referred to by the checks contained the notation that the purpose of the respective checks was to purchase and/or improve this addition. J. T. Harrell, G. W. Peckham, and W. H. Peckham and another bought and for some six months developed a tract of land adjoining Wichita Falls as a townsite addition. The burden became heavy. Peckham was jointly obligated with the bank's president upon more than fifty notes as the unpaid purchase price of this land. Peckham was also indebted to the bank in excess of $28,000.00. His personal balance was $341.90. His credit was

exhausted. The trust had lots of property and owed by little. Much money was needed further to improve Marlborough. Peckham and Harrell were friends;
1379 they were business associates. Peckham approached Harrell for a loan. A $25,000.00 loan was negotiated as above shown. Peckham personally indorsed the $25,000.00 note. He then issued trust check No. 478 for $17,623.70 drawn on and payable to the bank's order and received personal credit therefor with the bank. Thereupon G. W. Peckham got a deed to himself personally from his brother W. H. Peckham to his brother's one-fourth interest in Marlborough Addition making G. W. Peckham as an individual, the then owner of an undivided one-half interest in the Marlborough venture. It was, and is, the universal custom of banks and bankers when a ten to twenty-five thousand dollar loan is negotiated, that the bank learn by inquiry the purpose for which the money is required. The day this $17,623.70 check was deposited to Peckham's personal account and before another deposit was made to his personal account, and by the fifth day after Harrell's $25,000.00 loan, Peckham issued his personal check for $5060, payable to J. T. Harrell and another officer of the bank to pay a personal debt of Peckham to these gentlemen. Said check being paid the date of its issuance, J. T. Harrell received a $2530.00 credit at a time when but for the $17,623.70 trust check deposited to Peckham's account, his balance would have been but $125.00 when Harrell cashed the $5060.00 check. Later G. W. Peckham executed a deed to one-half interest in Marlborough, but it was never delivered but was left in the possession of a third party with instruction that it should not be recorded but should be concealed from everyone and no one permitted
1380 to see it or to know of its existence, and it was not the grantor's intention that the deed should be delivered. During his lifetime Peckham treated the property as his own, exercised dominion over it, executed deeds of conveyance to parties thereof, signed releases of liens thereon, rendered the same for taxation as his

own and never disclosed to anyone of any sale thereof, and in fact so acted as to evidence his intention to claim personal title thereto in the event of its success but to repudiate the same and claim it to be a trust loss in the event of failure.

24.

Wichita Royalty Company is sued herein upon its indorsement of Texas Investment Company's note payable to the bank. The maker of this note is the corporate successor of the Marlborough Addition partnership, shown above to have been formed in the fall of 1925. As shown, Peckham originally owned a quarter interest and subsequently purchased a similar interest from his brother and was the record and equitable owner of a one-half of the Marlborough properties and liable for half of its debts at the time the above described $25,000.00 loan was negotiated for Peckham's personal benfit in March, 1926, as above pleaded. After having executed, but not having delivered, a deed to his interest Peckham later joined J. T. Harrell and the other owner of Marlborough partnership in the formation of a corporation known as the Texas Investment Company, Peckham subscrib-
1381 ing personally to one-half of the capital stock and the other partners their pro rata parts. Peckham joined in a deed to the corporation and the same was recorded. This corporation took title to this property free of the outstanding and unrecorded deed which Peckham had executed to his trust.

25.

Soon after the death of G. W. Peckham in November, 1929, the substitute trustee, who theretofore had been the bookkeeper of the trust acting under the direction of Peckham and having but ministerial duties, and being the owner of no certificate of stock in the trust during the period of time that Peckham was misappropriating the funds, became by appointment of Court, the substitute

trustee, and W. H. Peckham became the administrator of Peckham's Estate. These two for a period of time after the death of G. W. Peckham carried out a series of negotiations looking to the satisfactory adjustment of all these matters of defalcation by the former trustee so that it would not come out and be generally known, and the fraud of the deceased trustee would be concealed. The substitute trustee finding that the bank had not applied certain checks upon the trust's note to the bank, and further finding additional discrepancies so that the total considered by him to be a discrepancy was $19,826.67, being the aggregate amount of the checks which were shown by the books to have been applied upon notes payable to the bank, but which were in fact not so applied, and the sale price by the trust of two royalties shown on the
1382 books during Peckham's lifetime to have been accounts receivable by the trust, but which the substitute trustee fund Peckham had personally collected and retained. This discrepancy was called to the administrator's attention and the bank agreed to back Scannell up in the thing and it was agreed that the matter be concealed, the stockholders not being notified and the public not advised with a view to repaying the then considered defalcation out of the proceeds of a life insurance policy more than $100,000.00.

26.

The substitute trustee told an attorney that there was this $19,826.67 discrepancy and obtained the services of such attorney to prepare a proof of such claim to be filed with the administrator but said substitute trustee did not tell said attorney any of the other facts herein elsewhere pleaded and did not ask advise concerning the rights of the stockholders, nor of the trustee's duties as substitute trustee with respect to all of the facts herein pleaded but simply requested said attorney to prepare a claim to be filed for and covering specified items totaling as above shown. Said account was filed at a time when it was agreed by and between the substitute trustee and the ad-

ministrator of Peckham's estate that the fraud of Peckham would be concealed so that it would not become generally known and the existence of the $100,000.00 life insurance money and the administrator's promise to endeavor to work payment of the discrepancies out
1383 of such life insurance money, and other facts herein elsewhere pleaded, lulled the substitute trustee into inactivity, and he actively joined in a continuation of the concealment of the former trustee's fraud. He did not know what his rights were, and assumed and believed that Peckham had the right to deal between himself individually and himself as a trustee without authority from, or notice to his stockholders. He further believed that he had no alternative as trustee but to accept the properties that Peckham had conveyed to his trust, nor did he know that he could do other than to claim Marlborough Addition and/or its stock equivalent in the Texas Investment Company. He was without counsel and without advice when, with J. T. Harrell and the bank's lawyer, a stockholders and directors meeting was called and he was elected President of Texas Investment Company, was issued as trustee one-half of the capital stock of the corporation, which in the meeting he indorsed as collateral security to the note herein sued upon, and which note he also indorsed as substitute trustee. He subsequently renewed it some three or four times and paid thereon moneys of the trust at a time when he was wholly oblivious to his rights and when he was joined in an effort to further conceal the facts from the stockholders.

27.

Finally when the bank had gotten him to renew several times the 1926 notes and the Texas Investment Company notes, had gotten him to accept stock in Marl-
1384 borough Addition and had written up the minutes under the direction of counsel for the bank, and when the trust had been tied in every possible way that under the circumstances it could be tied without disclosing to the stockholders what had transpired, the

bank filed suit to collect the notes, first selling under the pledge all of the capital stock of Texas Investment Company to the bank and here suing for a deficiency existing after applying against the notes the bid of the bank.

28.

The bank then sued out an application for the appointment of a receiver and persuaded a district Judge improvidently to grant such receiver, and which receiver took from the possession of said substitute trustee all of the books and records of the Company and the possession of all of the assets of the Company.

29.

It was at this time that the substitute trustee for the first time sought advise to determine what rights, if any, the stockholders had, and what duties, if any, he owed the stockholders in protecting them against the former frauds of his deceased friend. It was then for the first time that Scannell disclosed to any attorney the facts and circumstances herein elsewhere pleaded. Thereupon and without delay, the substitute trustee answered the bank's suit, pleading want of consideration and non est factum to the obligation declared upon by the bank, pleaded the facts herein pleaded in cross action against the bank
1385 and advised by letter the stockholders of what had transpired and what action he had taken, the stockholders by letters commending his action in bringing the suit.

30.

We here now present Wichita Royalty Company's account with defendants in cross action:

Item	Cr.	Dr.
Loans to Peckham deposited in trust account	$40,000.00	
Trust checks listed above drawn on and payable to the bank..		127,529.40

Trust checks listed above drawn by and payable to G. W. Peckham		9,238.16
Payments made by Peckham on liability account of trust with bank (S. F. 520-522)	6,821.22	
Portion of voucher No. 427 accounted for	3,000.00	
Check payable to Security Nat'l Bank where Peckham credited		6,000.00
Check to Marlborough Addition ..		1,500.00
Check to Texas Investment Company		500.00
Escrowed trust funds in bank deposited to Peckham's account		6,048.00
Cashier's check for Bristow royalty deposited to Peckham's account		6,000.00
Cost price Stephens Royalty	22,407.00	
	$72,228.33	$156,815.56
Deposit Balance	84,587.23	

The checks above pleaded as having been wrongfully charged against the trust deposit and credited to the private account of the trustee through the facilities of the bank and its active participation in the fraud were wholly inoperative to lessen the trust's deposit balance with the bank. Neither during Peckham's lifetime, nor during the period of concealment under the direction of the substitute trustee, was there any demand upon the refusal to pay by the bank the moneys deposited and the difference between the trust's monies deposited to the account by Wichita Royalty Company and checks authorized to be charged against such deposit for the $84,587.23 balance, for which cross complainants nerein sue. In other

words, there has been no authorized demand and refusal to pay the aggregate deposit represented by the checks listed above as having been charged against the account without authority and said deposit account, and the bank's implied obligation to repay the same upon demand was not lessened by either of the checks above set out, and this suit is brought specifically for the recovery of the trust deposit balance with the bank, as well as for the bank's active participation with Peckham in breach of the trust.

32.

Cross complainants say that not a single stockholder of Wichita Royalty Company, other than the trustee, ever knew, prior to the institution of this suit, of any
1387 of the facts herein pleaded; that such facts were concealed from them; that such facts were well known to the bank, its officers, agents and employees; that the facts were themselves self-concealing; that the bank knew the monies deposited to Wichita Royalty Company's account were trust funds and that G. W. Peckham was but the trustee thereof, representing parties beneficially interested and in the fiduciary capacity. The bank further knew that the trustee had no right to use trust funds for personal purposes—the bank knew that Peckham had a personal account in the bank, a deposit checking account and also a note or liability account. It knew that Peckham over a long period of time, and in a series of transaction, all having the same character and involving the same element or plan was transferring large sums of money from the trust account to his personal account and usually at times when his personal account was in need of additional funds. The bank actively and knowingly aided him in making the transfer. Most of the checks were made payable to the bank's order. The bank knew the trustee was commingling trust funds with his personal funds, and knew that it was actively assisting him in doing so. It knew that Peckham was drawing

checks on his personal account for personal purposes, an account which it knew was commingled funds. It further knew that every payment made from the commingled account for personal purposes would amount to a wrongful conversation of trust funds. It knew that Peckham was indebted to it in large sums of money and that he was making payment on this debt from time to time
1388 to the bank by drawing checks on his personal account, which it knew was commingled funds of personal funds and trust funds. It knew that he was using trust funds to pay a private debt. It knew that Peckham's personal credit rating would be increased by its participation with the trustee in transferring trust funds to Peckham's relatively small personal balance, monies which the bank knew he did not own. The bank aided him in making these transfers and then accepted his checks in payment of his personal debt to the bank.

33.

That the City National Bank in Wichita Falls, Texas, has assets and assumed the liabilities of the City National Bank of Wichita Falls. Texas.

Wherefore, plaintiff prays that citation issue to those not heretofore served herein, and that upon the trial hereof, this Court enter judgment denying the plaintiff any recovery against cross complainants, and giving to cross complainants judgment for their debt, interest, costs of suit, and for such other and further, general and special, regular and equitable relief, to which, in the premises, under the facts and upon the law they may be entitled to recover from the several parties hereto, including decree of voiding the binding effect of each and every transaction above pleaded, and voiding the effectiveness of any and all conveyances from Peckham as an individual to his trust, and in honor bound will ever pray.

KILGORE & ROGERS,
Attorneys for Cross Complainants.

1389 State Of Texas,
County Of Wichita.

Guy Rogers, being duly sworn on oath says: That he is attorney of record for cross complainants in the above pleading and that the facts therein stated are true.

(Signed) GUY ROGERS.

Subscribed and sworn to before me this 14th day of September, 1934.

(Signed) GRACE JARNAGAN.
(Seal) Notary Public, Wichita County, Texas.

The Witness:

So far as I know, this Wheeler and Gray County properties are producing, I don't think we have collected anything, I couldn't tell you how many wells. I think we gave a deed of trust on our Texas properties. My memory is that it was sold under the mortgage, you will have to get the instruments and find out about it. I will attempt to find out for you when this property became valuable. This instrument marked "Plaintiff's Exhibit 27" deed of trust, dated December 6, 1933, is the deed of trust given on the Texas property. It does not recite any specific interest. It was filed for record April 4, 1934, recorded April 9, 1934. This property, along with other interests we might have in Archer, Young, Gray and Wheeler Counties, and other personal property was sold to Guy Rogers under the will of L. T. Rogers for $250.00 on August 7, 1934, as shown by Exhibit 28. I think that is all the property we had in Wheeler and Gray Counties and it was our intention for that instrument to cover all of those properties and convey whatever interest and title we might have. I only meant to protect Mr.
1390 Black in so far as we could for his assistance in the defense of this lawsuit, it does not specify any specific interest. I think Mr. Black knew of the existence, at least, of this lawsuit, if not what title we might have had. We had the deed, whatever they reflect.

As to whether or not in paragraph 2 of Defendant's Exhibit 150, we tendered back the Wheeler County properties, I will say that the instrument will show for itself, that is what we intended to do when we filed the instrument.

I have the conveyance here for No. 93, to George Peckham, and some way or other we missed the royalty conveyance from Peckham to the Wichita Royalty Company. Plaintiff's Exhibit 99 is the royalty and the lease, I think we have both the lease and the assignment. Plaintiff's Exhibit 99 is an assignment for an oil and gas lease, dated October 8, 1925, from George W. Peckham to Wichita Royalty Company. That is the Ellis County, Oklahoma property, that cost $160.00 and it is part of check No. 554, dated December 2, 1926, for $1,500.00. That conveyance was filed for record November 6, 1926; our assignment to the Wichita Royalty Company was of record in Oklahoma, the county where the property is situated, on November 6, 1926. We did not pay for it until December 2, 1926. George Peckham paid $160.00 to A. A. Peard on November the first, on this same property. I think there was development somewhere around that property when we secured it, some development in the neighborhood, the price would indicate that it was not very
1391 valuable. This is one of the items in this lawsuit.

I don't remember whether I testified in the former trial that this was in very likely looking territory for oil purposes or not, I think I sent out a letter notifying the stockholders of the purchase of this property, it belonged to the Wichita Royalty Company at that time. The letter was dated March 15, 1927. At that time, I thought it was in likely looking territory, I have since learned that George Peckham paid every dime we paid. George Peckham's check is dated November 1, paid November 9, $160.00.

No. 94, Plaintiff's Exhibit 42, is an assignment from George Peckham to the Wichita Royalty Company for a five year limited royalty in Hartley County, dated August 7, 1926, acknowledged December 15, 1926, and

recorded December 21, 1926. We made the following report on March 15, 1926, to the stockholders, "One of the most promising geological structures in the Panhandle is located in Southeastern Hartley County and we have secured one-half of royalty on Section 54, of the Bravo Ranch Lands in Southeastern Hartley, a number of tests have been started in this district, and successful completion will mean much to the Wichita Royalty Company." Mr. Peckham was the trustee, and that was his information, I never was up there in my life. Plaintiff's Exhibit 40, we paid for that, a check made to the City National Bank, check for $1,920.00, dated December 7, 1926, the voucher reading, "Royalty owned in full pay-
1392 ment of one-half of royalty on 640 acres in Hartley County, Texas, $1,920.00." That check was paid on December 15, 1926, and that is the date of the cancellation made payable to the City National Bank. This conveyance which you now hand me is an assignment from Joseph N. Perkins and covers section 54, 1/16th royalty, Bravo Ranch Lands, Hartley County, Texas.

Mr. Boone:

We offer the instrument in evidence.

DEFENDANT'S EXHIBIT 151.

From Joseph M. Perkins of Eastland County, Texas, to G. W. Peckham, Wichita County, Texas.

Consideration $10.00 and other valuable considerations.

Conveying an undivided 1/16th of all the oil and gas produced or that may be produced from the following described land, to-wit:

All of section 54, as the same is shown by the W. D. Twitchell map of the Sub-divisions of the Bravo Ranch

lands, located in Hartley County, Texas, containing 640 acres, more or less.

To continue five years from August 7, 1926, unless oil or gas or other minerals are found in producing quantities, or as long thereafter as same may be produced.

Dated August 7, 1926.

Duly acknowledged.

Filed for record December 31, 1926. 9:00 A. M.

1393 Recorded December 31, 1926, at 11:30 A. M.

The Witness:

Plaintiff's Exhibit 39 shows a draft on G. W. Peckham for $1,920.00, and reads, "October 4, 1926, draft papers, account G. W. Peckham $1,920.00." That was paid December 15, 1926. Our check was paid for $1,920.00 on December 15, 1926, the same date the check was canceled, made on December 7, 1926. Our check is Plaintiff's Exhibit 40. Check No. 563, is dated December 28, and the voucher reading, "Recording fees, to recording fees from J. N. Perkins to G. W. Peckham and from G. W. Peckham to Wichita Royalty Company for one-half of royalty on Section 54, Bravo Ranch land, Hartley County, Texas, for $2.00." It is payable to the County Clerk of Hartley County, Texas. At the time we acquired this conveyance of this Hartley County Royalty from George Peckham, we likewise received at the same time a deed from Mr. Peckham, and sent most of them up there to be recorded. I think the way the matter was handled, that Mr. Perkins had drawn a draft on George Peckham with that deed attached, through the City National Bank and the royalty company paid the City National Bank for that deed, and Mr. Peckham immediately executed a deed to the royalty company. There was some development going on up there when the property changed from pos-

sible production to dry holes. I don't know when the hole was completed. That was well No. 1. The information recited in the report of March 15, 1927, that these wells were being drilled, is the information I got from Mr. Peckham. I do not mean to testify that this well was completed as a dry hole before December 31, 1926.

The next property is No. 95, check No. 583.
1394 There is not any assignment, as far as I know, for that property from G. W. Peckham. My memory is that is one of the properties for which we received no assignment. The property is located in Archer County. On our voucher No. 550, dated November 20, 1926, check made to the City National Bank in the amount of $7,500.00. On the voucher our information, royalties owned, property No. 95, being 3/16th interest in the leasehold estate eighty acres, east half, block 10, North Anderson Ranch lands, S. P. Survey, Archer County, Texas, $5,000.00. Also on the Porter royalties owned property No. 96, to apply on purchase of one-fourth of royalty of the Southwest sixty acres of E. Polk land, District 717 of William Polk preemption survey, Archer County, Texas. Also one-fourth of seven-eighths leasehold estate on the west forty acres of the same land, $2,500.00—total $7,500.00, which check was for properties Nos. 95 and 96. Check No. 583, dated March 1, 1927, made to the City National Bank for $301.80, and the voucher reads, "Royalties owned, property No. 96, last payment on purchase of one-eighth royalty on the southwest sixty acres E. Polk land, Abstract No. 717, William Polk preemption survey, Archer County, Texas, also 1/4th of a 7/8th leasehold estate on the west forty acres of the same land. This payment, together with checks 550 and 554, makes a total cost of $3,000.00 for the above interest. That is No. 96. Check No. 554, on property No. 96, the voucher reads, "Royalties owned, Property No. 96, to apply on purchase
of 1/4th of royalty on the southwest sixty acres
1395 E. Polk land, Abstract 717, William Polk preemption survey, Archer County, Texas. Also 1/4th of the 7/8th leasehold estate on the west forty acres

of the same land, $198.18." There is one check there of $1,500.00 and only $198.00 and some cents were applied, together with $301.82, and $7,500.00, makes $8,000.00 these two pieces of property cost Wichita Royalty Company. I do not have any conveyance from F. O. Harrell to these properties, I will see if I can find one.

Property No. 97, concerns a conveyance of certain properties in Wichita County, Texas, dated April 15, 1927, Defendant's Exhibit 44. We paid $3,000.00 for that, the check payable to B. L. Fain. No. 598 for $500.00, made to B. L. Fain is indorsed by B. L. Fain. No. 602 made to B. L. Fain for $1,000.00 is indorsed by B. L. Fain and under it George Peckham, the B. L. Fain does not seem to be his signature. That check was deposited to the credit of G. W. Peckham April 23, 1927. No. 607, dated May 6, B. L. Fain for $500.00, is indorsed B. L. Fain and under it G. W. Peckham and the signature of B. L. Fain is not his, not his handwriting, and the check was deposited to the account of G. W. Peckham, paid May 6, 1927. Check No. 60 dated May 16, 1927, to B. L. Fain for $1,000.00 is indorsed B. L. Fain, and under it G. W. Peckham, and it is not B. L. Fain's signature; the check was deposited to the credit of G. W. Peckham on May 18, 1927. I do not know whether B. L. Fain owed G. W. Peckham any money or not. Those checks were
1396 all given in April and May, 1927. Plaintiff's Exhibit No. 188, his check, is dated April 22 and paid on April 23, G. W. Peckham to B. L. Fain for $1,000.00. This check for $1,000.00, it occurs to me that one of these for $500.00 is indorsed by B. L. Fain and the other three are G. W. Peckham, and went to his account; this $1,000.00 check here and the five hundred dollar check there would show that they had a 50-50 interest in that piece of property—I am not trying to insinuate that George Peckham had a fifty percent interest in it, I am only trying to give you all the information I can from these checks. I do not know whether George Peckham was advancing B. L. Fain any money or not, but I feel confident that he was not. As far as I know, that is all we paid on the property.

Property No. 98, that is the Pecos County property, Check No. 732, here is the certified copy of the assignment from B. L. Fain, dated July 20, 1928, to G. W. Peckham, trustee for the Wichita Royalty Company covering one-fourth interest in royalty and other minerals in section 206, block 3, certificate No. 1-632, issued to the Texas and Pacific Railway Company and containing 640 acres of land. The check we paid B. L. Fain for that is No. 732, dated July 20, 1928, issued to B. L. Fain in the amount of $640.00, and indorsed by B. L. Fain, cleared through our account in the City National Bank on July 21, 1928. All those properties were reflected on the books of the Wichita Royal Company. This is the last property we bought, No. 98, July 20, 1928. From July 20,
1397 1928, as well as prior thereto, our voucher records and our property records and the entire books of the Wichita Royalty Company, reflect every piece of property we have bought—some of those assignments we do not have, I do not know of any of the properties that are held in the names of others, other than what we found out about some of these pieces, as reflected by the records. Under proper procedure, I imagine anyone interest in the Wichita Royalty Company could have inspected our records. At no time has any stockholder ever requested me to file this lawsuit, it was my duty to look after the interests of the Wichita Royalty Company as a specific trust in me, and it was part of my duties to see that the stockholders' interests were represented, regardless of my personal inclination. I can give you the amount I have received from the Wichita Royalty Company since George Peckham's death.

I received on December 31, 1929, $400.00, I also received the following amounts: No. 875, January 21, 1930, $200.00, indorsed by me; No. 883, January 31, 1930, $200.00; No. 889, February 15, 1930, $200.00; Check No. 892, February 28, 1930, $200.00. Check No. 896, March 15, 1930, $200.00; March 31, $200.00; April 15, 1930, $200.00; No. 905, April 30, $200.00; No. 909, May 15, 1930, $200.00; Check No. 912, May 31, 1930, $200.00; I received

the money on all of the above checks. Check No. 917, June 14, 1930, $180.00, it shows stenographic hire and handling office and business of Wichita Royalty Company, since 1929, that is the girl's money. I cash-
1398 ed it, and got the money as far as the bank is concerned, it says there it is for stenographic hire. I paid her personally until I got the money. I will have to hunt the check up for you. I received the money on the following checks, No. 918, June 13, 1930, $200.00; No. 922, June 25, 1930, $200.00; No. 931, July 16, 1930, $200.00; No. 936, July 31, $200.00; Check No. 939, August 15, $200.00, that is the indorsement of H. C. Richardson on that check, he is bookkeeper; check No. 940, August 30, 1930, I received $200.00; Check No. 949, September 18, 1930, $200.00; check No. 953, September 29, 1930, $400.00; check No. 958, October 16, 1930, $200.00; check No. 963, November 15, 1930, $200.00; check No. 968, December 1, 1930, $200.00; check No. 969, December 15, 1930, $200.00; Check No. 973, December 30, 1930, $200.00; check No. 974, January 9, 1930, $145.00; Check No. 978, says, "Void," dated January 14, 1931, I got the money on it, it was paid in cash and not run through the bank. I received the money on the following checks, No. 983, March 24, 1931, $100.00; No. 986, April 1, 1931, $150.00; No. 992, April 15, 1931, $200.00; No. 994, April 20, 1931, $100.00; No. 999, May 20, 1931, $200.00; No. 1,005, June 12, 1931, $140.00, that check was paid on my indorsement, I don't know whether I got the money on that or not, I imagine I did. It was paid by the bank 6-13-31. I also got the money on the following checks, No. 1006, June 15, 1931, $60.00; No. 1008, July 1, 1931, $200.00; No. 1013, July 31, 1931, $200.00; Check No. 1016, August 31, 1931, $200.00; check No. 1018, October 1, 1931, $200.00;
1399 check No. 1,020, October 7, 1931, $3.35, the record shows that that was for miscellaneous expenses, Court decree, dissolving receivership October, 1931, Court receiver's certificate, filing case for old records, $1.75. I indorsed those checks. I received the money on the following checks, No. 1023, October 29, 1931,

$200.00; Check No. 1026, December 1, 1931, $200.00; Check No. 1,027, January 1, 1932, cashier's check First National Bank for $225.00, I will say that $25.00 of it was for payment of office rent to January, 1932, and $200.00 was clerical and trustee salary for the month of December, 1931, I think that was my $200.00. I received the money on the following checks, No. 1028, February 2, 1932, $200.00; No. 1032, February 25, 1932, $95.00, that shows to be office expense during the month of February as per statement attached. On February 23, 1934, I received a check for $150.00 and got the money on it. I am unable to locate checks 1,043 and 1,047. On February 28, 1934, I received a check for $150.00 and got the money on it, that was 1,043. I also received the money on the following checks, No. 1,044, April 14, $256.94—that is the one that is missing. Check No. 1,045, June 5, 1934, $273.56; check No. 1,046, to the Royalty Company, dated October 20, 1934, $578.39; Check No. 1,050, May 29, 1935, I received a check for $541.92 and the check says, "Miscellaneous expense, transferred to cashier's check to avoid possibilty of garnishment by City National Bank, to be pro rated to expense later." I will have to trace that out for you. Check No. 1,051, on May 29, 1936,
1400 and there was check No. 1,051 of the Royalty Company's made to E. E. Scannell for $2,860.56, that is to E. E. Scannell, trustee, and marked "Canceled." Attached to this check is a check dated May 29, 1936, payable to E. E. Scannell, trustee, $2,860.56, signed Wichita Royalty Company by E. E. Scannell, trustee, I don't know what that is for, to be held for accounting and distribution. I think it was run back through the account, it was taken out by the other, and transferred to cashier's check to avoid the possibility of garnishment by the City National Bank, to be pro rated to expense later. I will look up check No. 1,052. This check for $28.90, to the Stone Printing Company for five hundred letterheads, for $4.50, Railey Printing Company, Culner Pad, 50c Heydrick Mapping Company Archer and Wilbarger County maps, $10.00. Postage $11.00. Trip to Archer County and

Graham on taxes, $10.00. Protest fee on Continental Oil Company check in the amount of $2,640.03, $2.90, making a total of $38.90. There appears to be a check here No. 1,054, payable to E. E. Scannell, trustee, for $1,508.71, signed Wichita Royalty Company, by E. E. Scannell, dated June 6, 1934, which is marked "Canceled." Attached to that is another check that was paid June 6, 1936, for $1,508.71, paid to C. C. Wichita Royalty Company, by E. E. Scannell, trustee. That check, like the others, was transferred to a cashier's check to avoid the possibility of garnishment temporarily until such time as the amount could be pro rated to expense. Check No. 1,054, for $256.94, I got the money on that. The
1401 cashier's check was in the name of E. E. Scannell, I will trace and show you what became of that money. Check No. 1045, dated June 7, 1934, for $273.56, signed Wichita Royalty Company, by E. E. Scannell, payable to E. E. Scannell and cashed, I got the money on that. Check No. 1,045 was dated June 7, 1934, the next day after the voucher was made. There is another check No. 1,055, dated May 31, 1936, for $563.47, payable to E. E. Scannell, trustee, cashier's check. It shows to be converted to cashier's check and pro rated to expense, I will be glad to look that up. The next check is 1,061, dated June 30, 1936, $69.55, payable to E. E. Scannell, was accounts payable of Cleo Bowers for stenographic work; distribution on that check is for office supplies from Railey, $1.55, Storm Printing Company, $5.00. Postage, $3.00, Cleo Bowers, $50.00 and $10.00. I think I gave those people my personal check, I will be glad to look them up. Check No. 1,064, $50.00, is marked traveling expense to apply on traveling expenses to Oklahoma City and Tulsa and Tonkowa and Ponca City, June 25 to 28, traveling expense July 3, to Oklahoma City and Okmulgee, I went up there. I cashed that check at the Western Union. Check No. 1,072, $109.81, payable to E. E. Scannell, trustee, dated January 5, 1937, converted to cashier's check to be used in connection with the lawsuit of Wichita Royalty Company versus City National Bank,

details to be furnished. I still have that cashier's check—on the First National Bank of this city. I think I also have another cashier's check for $75.00 on the
1402 same bank. I do not have any currency that belongs to the Wichita Royalty Company, they do not have any money in the bank. On May 31, 1932, Journal Entry No. 8, $50.00, I think that was a cashier's check, I will look into that for you. There was a suit in progress in 1932, we did not have any money where it could be attached. Journal Entry No. 14, 5-31-32, $1,359.57, I think that was money held in cashier's check, I will look into that. The item of $1,015.04, May 31, 1933, I did not personally receive the money; on journal entry—I will read you journal entry and the totals of the amount I had on hand, cash $115.00, paid legal services, debit $115.48. Turned cashier's check over to Guy Rogers, cash on hand, credit $108.58, accounts payable to debit, $108.50, turned cashier's checks over to E. E. Scannell, I will have to check that out and let you know what I did with it. The amount is $108.58, cash on hand, debit $311.33, oil and gas income credit $311.33. December, January, February, $115.48, $108.58, $87.27; I think those were cashier's check, cash on hand, debit $96.22, oil and gas income credit $96.22, oil runs March, 1935. This one is May 31, 1933, that you are asking about, something is written in here somewhere, that is what Mr. Lambert said it was, I will try and give you those entries. That is $1,015.04, May 31, 1933, as I understand it, that item is cash that was on hand, and what I am reading is the way it was distributed out in 1934, and 1935. You will have to give me some idea as to what you want, I can show how the money was distributed when it came in
1403 to me, but the item of so much money in a lump sum, I cannot identify it—journal entry No. 5, May 31, accounts payable debit $1,015.04, reads, "To apply cash on hand to accounts payable which cover salaries and office expense in account as received and on hand." That was just a book entry and I had the money in cash—May 1, 1933—It means cashier's check. Before I testify

to any of that, I want some time to figure out and show you what was done with that money.

I think I first employed Mr. Davenport as a lawyer, somewhere around March, 1930. I also employed Guy Rogers about that time, about June, 1930, I think Mr. Davenport went out and Mr. Rogers took over the case. I don't remember whether John Davenport was representing me in the trial of this cause in 1932 or not, I think he was defending me personally. I told my lawyers about these transactions. When this suit was first filed by the City National Bank, it was only in regard to the $19,000.00 shortage that George Peckham had and as I remember it, we went into only that section of it. It later developed, after Mr. Rogers came into the case, that we were entitled to recover some other part—the Marlborough Addition deal and on some of these transactions, I think the pleadings themselves show what we claim, I don't recall all of the details. I employed Guy Rogers to look after the legal interest of the Wichita Royalty Company and took up with him the respective transactions.

I think the Porter Ranch was included and the
1404 Stephens Royalty and the Marlborough Addition, the Gray County Royalties, everything back to 1925. To the source of that note on which we were being sued, known as the $25,000.00 note, executed in March, 1926. I think we paid Mr. Rogers along as we could. I see here check No. 923, payable to Guy Rogers, dated June 25, 1930, and bears his indorsement, I think that is about the time I hired him. I think I have a written contract with him, I don't remember, I do not have the copy, I think it can be gotten. I talked to John Davenport a number of times, and he was paid, I couldn't tell you the date I gave John Davenport a check. On June 24, we gave Davenport and Crane, our check No. 921, for $500.00, legal services in the case of City National Bank versus Wichita Royalty Company, advise with reference to matters of shortage in the account of G. W. Peckham, trustee. That was a Wichita Royalty Company check. I do not know that I gave John Davenport my personal

check for representing me. So far as I know the Wichita Royalty Company never paid it. John Davenport represented the Wichita Royalty Company, he represented me personally, as I understand in the trial he only sat in looking after me. I did not employ him to try the lawsuit. Also here is check No. 932, July 17, 1930, Davenport and Crane, legal services in connection with settlement of suit and dismissal thereof, City National Bank versus Wichita Royalty Company. $200.00. Also check No. 941, to John Davenport, September 2, 1930, and says, "Legal services in connection with recovering title and other matters in re Peckham estate, $250.00."
1405 We paid John Davenport according to that, $950.00. Also here is check No. 952, September 29, 1930, to Kilgore and Rogers, $600.00. On October 16, 1930, Kilgore and Rogers, check No. 557, $400.00, "Legal services in connection with suit, City National Bank versus Wichita Royalty Company, $400.00." On November 15, 1930, check No. 965, made to Kilgore and Rogers, and reading "Legal services in connection with Peckham estate and City National Bank."

Mr. Rogers:

We offer it in evidence, with the indorsement, this check, Defendant's Exhibit 152.

DEFENDANT'S EXHIBIT 152.

Wichita Royalty Company, 1002 Staley Building, No. 965. When properly indorsed pay to the order of Kilgore & Rogers $200.00. To the City National Bank, Wichita Falls, Texas. Wichita Royalty Company, Wichita Falls, by E. E. Scannell, for trustee. (Indorsed) Kilgore & Rogers, by Jno. E. Kilgore. Davenport & Crane, by John Davenport. "1" "3" Perforated Paid 11-18-30.

The Witness:

I think we were going into these matters with attorneys along from November 30 to November 15, 1930, and doing my best to explain the matter to them.

I have the last check paid on the Porter Ranch, Property No. 83. I have check here, No. 970, $102.83, to W. T. Knight, Attorney in fact, December 17, 1930, and the voucher shows, "To our proportion of assessment for 1930 on the M. L. Porter Ranch, per statement
1406 attached, interest paid." I don't remember just when Guy Rogers came into this thing. Check No. 923, dated June 23, 1930, to Guy Rogers, says, "Legal services in regard to Peckham matters, and suit of City National Bank." I think there were two suits; this is suit 24,201-C, City National Bank of Wichita Falls versus Wichita Royalty Company, I think it is still a part of this suit here, but it says, this suit here, I looked at the record at noon and it says that this 24,201-C was dismissed on July 9. By check No. 952, I paid Kilgore and Rogers $600.00 for legal services in connection with settlement of George Peckham controversy with the City National Bank. I don't know whether that is the same thing involved here or not, those are legal technicalities that I cannot tell much about. We have a cross action against the City National Bank. Check No. 964 was issued to me for $23.25, and it says, "Legal expenses additional costs advanced in perfecting the title to interest in Porter Ranch in Archer County, paid to Davenport and Crain, November 4, 1930." I don't know whether we were claiming the Porter Ranch at that time or not, we were trying to get title, or something was being done, and I turned it over to Mr. Davenport and I think he was handling it. Check No. 942, dated September 2, 1930, county clerk Archer County, $20.00, legal services, filing deeds in connection with recovery title to Porter Ranch, Archer County, Texas—there was some legal technicality about that at that time, that was being settled in Archer County at the courthouse. You might ask Mr. Daven-
1407 port about that. I don't know as anything was being done with the Porter Ranch, I think it is involved in this lawsuit. Journal entry No. 6, in 1932, I wrote that, it is in my handwriting, February 1, 1932, and I wrote, "Profit and loss, $2,170.82. Notes payable

$1,841.68." Land in fee $4,012.50 credit which is the total of the other two items under which we wrote, "to surrender our interest in Porter Ranch, Archer County, Texas, was deed assigned, executed and turned over to W. T. Knight, reference made to lawsuit City National Bank versus Wichita Royalty Company, March 15, 1932, in 78th District Court." If there is a deed to W. T. Knight, I would like to see it. I will have to trace that out for you. I could not say that I wrote down there that we had executed and transferred in February, 1932, to W. T. Knight all of our interest in the Porter Ranch. I did write that on the ledger journal entry No. 6, 1932, it may have been just a book entry, or it means something else was done with it, probably. I will have to check into that to see what was done with it. After refreshing my recollection, I cannot recall that it was ever turned over to Mr. Knight, if you have an instrument to that effect, I would like for you to produce it, or if you will allow me to talk to Mr. Knight I will try and see what happened.

Mr. Rogers:
We admit that Mr. Scannell was served with citation in suit No. 24,201-C, on June 23, 1930, by the Sheriff of Wichita County, Texas.

Mr. Boone:
The suit was returnable on July 7, 1930. Do
1408 you admit that?

Mr. Rogers:
Yes.

Mr. Boone:
We offer in evidence the petition in suit No. 24,201-C, Defendant's Exhibit 153:

1409 DEFENDANT'S EXHIBIT 153.

In the District Court of Wichita County, Texas, for the 89th Judicial District. July Term, A. D. 1930.

The State of Texas,
County of Wichita.

To the Honorable P. A. Martin, Judge of said Court:

Comes the City National Bank of Wichita Falls, Texas, hereinafter styled plaintiff, complaining of the Wichita Royalty Company, a common law trust, whose sole trustee is E. E. Scannell, who resides in Wichita County, Texas, hereinafter styled defendant, and respectively presents to the Court:

I.

The plaintiff is a corporation duly incorporated under the laws of the United States, doing a general banking business in Wichita Falls, Wichita County, Texas.

II.

That the Wichita Royalty Company is a common law trust estate, operating under a Declaration of Trust, recorded in the Deed Records of Wichita County, Texas, in Volume 168, pages 56 and 58, and that E. E. Scannell is its sole trustee, duly appointed and qualified as such, and is a resident citizen of Wichita County, Texas, and has sole authority and power to manage, control and liquidate said trust.

III.

That said trust is engaged in the general business of buying and selling lands, oil properties, mineral
1410 rights and royalties, as evidenced by the powers set forth in the Declaration of Trust, aforesaid.

and that said Declaration of Trust Specifically provides, among other things, that the assets and properties are charged with all of the debts and obligations of said trust estate.

That said trust has been generally engaged in the purchase of royalties, stocks, bonds, real estate and is now the owner of certain oil lands and interests and royalties, a full complete detailed and itemized list thereof being hereto attached, marked Exhibit "A" and made a part of this petition, and here referred to for all purposes.

That in addition to said properties, the said defendant is the owner of one-half of the capital stock of the Texas Investment Company amounting to 325 shares, which is a corporation duly incorporated under the laws of the State of Texas.

IV.

That on or about the 24th day of February, A. D. 1930, the defendant, acting by and through its sole trustee, E. E. Scannell, for a valuable consideration made, executed and delivered to the plaintiff a certain promissory note dated February 24th, 1930, due ninety (90) days after date, payable to the order of the plaintiff for the principal sum of $26,846.20, with interest from date until paid at the rate of eight (8%) per cent. per annum, which note further provides for ten (10%) per cent. additional upon the principal and interest as attorney's fees, if sued upon or placed in the hands of an attorney for collection, which note was, and is a renewal of an indebtedness owing by said defendants to the plaintiff herein, for money borrowed by said defendants in due and regular course of business.

1411

V.

That to secure the payment of said note, and all renewals and extensions thereof, the defendant made, exe-

cuted and delivered to J. T. Harrell, Trustee, a deed of trust, dated July 24th, A. D. 1925, upon the following described lands and premises, to-wit:

Full over-riding royalty covering 40 acres, Lot No. 4 of the South 100 acres, Sarah Tankersley Survey, Abstract No. 278, recorded in Vol. 84, pages 254-6 Deed Records of Young County, Texas;

9/32 of 1/8 fee royalty in 160 acres, known as R. D. Owen Survey, Abst. 2245, and being known as BRIR Survey No. 38, and the same having been patented to R. D. Owen, October 29, 1919, and said patent duly recorded in Volume 80, page 249, of Deed Records of Young County, Texas;

1/8 of the 1/8 Fee Royalty in 80 acres known as the south half of the J. A. Harkness Survey, Abstract 1442, and patented to Albert Owen, Patent No. 1412 ..... and which is recorded in Volume 2, page 537, of the Deed Records of Young County, Texas.

1/8 of the 1/8 Fee Royalty in South 80 acres, G. L. Aynesworth Survey BRIR No. 49, Abst. 1948, patented to J. A. Driver, Assignee, dated Aug. 13, 1913, Patent No. 3, Volume 47, Young County, Texas.

1/16 of 1/8 Fee Royalty in 50 acre tract, known as a part of the Pedro-Varela XI League Grant, recorded in Deed Records of Limestone County, Volume 140, page 617, known as Ellis Tract, Mexia, Texas.

which deed of trust was duly filed for record in the Counties where said lands were situated, and is a valid lien upon said lands and premises above described.

VI.

That the note hereinabove described is past due and unpaid, except the sum of $1,000.00 was paid thereon on

April 10th, 1930, and the plaintiff has placed said notes in the hands of attorneys for collection, and has agreed to pay said attorneys the sum of ten (10%) per cent. upon the principal and interest as attorney's fees, if sued upon or placed in the hands of an attorney for collection.

1413 VII.

That by and under the terms of said deed of trust, the plaintiff has, and is seized with an equitable lien upon all of the other assets of said defendant to secure the payment of said note.

VIII.

That the said defendant is also indebted upon other obligations as maker and indorser among which is an obligation of the Texas Investment Company for $23,500.00; another obligation of the Texas Investment Company for $5,000.00; another obligation of the Texas Investment Company for $5,000.00.

IX.

That said defendants, the Wichita Royalty Company and E. E. Scannell, sole trustee, do not have sufficient assets to pay said indebtedness in the ordinary course of business, and cannot realize or well, within a reasonable length of time, sufficient assets with which to pay its obligations, and is in an insolvent condition.

X.

That its properties are producing oil properties, and are being depleted—that is to say, that oil is being produced therefrom and said properties are being depleted, and said properties and assets, as well as the Wichita

Royalty Company should be placed in the hands of a Receiver to take charge of, conserve the same, and liquidate the indebtedness, pending this litigation; that
1414 said Receiver is necessary for the reason that said Wichita Royalty Company is insolvent, or is at least threatened with insolvency, and that the said defendant has no ready assets with which to pay its obligations.

Wherefore, premises considered, the plaintiff prays for citation, for notice of this application, and for an appointment of a Receiver to take charge of, administer, conserve the assets and collect the proceeds thereof, pending this litigation, for a judgment against the defendant for the amount of the plaintiff's debt, interest, attorney's fees and costs of suit, for the fixing and establishment of a lien upon all of the assets of said defendant, for the satisfaction of this judgment, and for a sale of said properties under the order of this Court, and an application of the proceeds thereof to the payment and satisfaction of the indebtedness herein sued for, and such other indebtedness as may be owing by said defendant. Plaintiff further prays for costs of suit, and for general relief.

BULLINGTON, BOONE, HUMPHREY & KING,
Attorneys for Plaintiff.

EXHIBIT "A."

Our Interest:

29/640 of the total production in three acres more or less out of the Northwest corner of the West 5 acres, out of the North 10 acres, out of the North 20 acres, out of the North 40 acres, Block #75, Red River Valley
1415 Lands, Wichita County, Texas, 50/520 of 6/16 or 30/832 of the total production in the East 10 acres of the South 20 acres of the Northwest 40 acres, out of Block #88, Red River Valley Lands, Wichita County, Texas.

3.

1/64 of 1/8 or 1/48 of the total production in All of Lots Nos. 13 and 14 of the Orchard Addition to the town of Burkburnett, Wichita County, Texas.

4.

1/64 of 1/8 or 1/512 of the total production in 640 acres more or less known as J. B. Evans Farm, Block #818, to-wit: 200 acres of T. E. & L. Co., Survey, and 200 acres of the Elizabeth Stanley Survey, and 200 acres more or less of Jucinda Meadors Survey, Wichita County, Texas.

5.

3/22 of 1/8 or 3/176 of the total production in A certain tract of land in and to block #1, Goodwin Addition, Townsite of Burkburnett, and by virtue of a certain pooling contract which includes Lots No. 19 and the East 1/2 of 20, Wichita County, Texas.

6.

1/11 of 1/8 or 1/88 of the total production in Lot No. 11, Block #1, Goodwin Addition, Townsite of Burkburnett, subject to a certain pooling contract dated August 7, 1918, Wichita County, Texas.

7.

5/12 of 1/8 or 5/96 of the total production in Lots Nos. 5-6-7-8-9, North 1/2 of Block #22, Townsite of 1416 Burkburnett, Wichita County, Texas.

8.

1/2 of 1/8 or 1/16 of the total production in Lots Nos. 11-12-13-14-17-18-19-20 of the H. E. McConnell subdivision of the East 200 acres of the E. Michna Land of the F. W. Huseman and A. A. Durfee Surveys, Block #819, Wichita County, Texas.

9.

1/12 of 7/16 or 7/192 of the total production in Two acre tract of land in the Musgrave Addition, Townsite of Burkburnett, described in Deed, Wichita County, Texas.

10.

3/64 overriding royalty in 40 acres of the South 100 acres of the Sarah Tankersley Survey, Abstract #278, known as Lot #4, Young County, Texas.

11.

1/10 of 3/8 or 3/80 of the total production in Lots Nos. 9 of the H. E. McConnell subdivision of the East 200 acres of the Michna Land in F. W. Huseman Survey, Block #819, Wichita County, Texas.

12.

1/10 of 3/8 or 3/80 of the total production in Lot No. 10 of the H. E. McConnell subdivision of the East 200 acres of the Michna Land in F. W. Huseman Survey, Block #819, Wichita County, Texas.

13-A.

25/520 of 3/8 or 15/832 of the total production in the East 10 acres of the South 20 acres of the North-
1417 west 40 acres out of Block #88, Red River Valley Lands Subdivision, Wichita County, Texas.

13-B.

7/256 of the total production in the West 2½ acres of the North 5 acres of that 10 acres out of the 60 acres off

the North end of the South 140 acres off the East 272 acres of Block #101 Red River Valley Lands, Wichita County, Texas.

13-C.

5/360 of 7/16 or 7/1152 of the total production in the South 5 acres of the West 12½ acres of the East 1/2 of the Southwest 1/4 of the Southwest 160 acres of Block #97, Red River Valley Lands, Wichita County, Texas.

13-D.

1/14 of 1/8 or 1/112 of the total production in Lot No. 19, College Heights Additions, Townsite of Burkburnett, subject to pooling agreement dated August 19, 1918, Wichita County, Texas.

14.

1/24 overriding royalty of the total production in 7 acres more or less in the South Central part of Block #97, Red River Valley Lands, Taylor Farm, E. Stanley Survey, Abstract #259, Wichita County, Texas.

15.

1/6 of 1/8 or 1/48 of the total production in Lot No. 3, Block #1, of the College Heights Additions to the town of Burkburnett, subject to pooling agreement, Wichita County, Texas.

1418

16.

1/16 of 1/8 or 1/128 of the total production in All of the South 80 acres of the J. A. Harkness Survey, Abstract #1442, Patent #112, Volume #9, known as A. L. Owens Farm, Young County, Texas.

17.

1/8 of 1/8 or 1/64 of the total production in All of the South 80 acres of the J. A. Harkness Survey, Abstract #1442, Patent #112, Volume #9, known as A. L. Owens Farm, Young County, Texas.

18.

1/8 of 1/8 or 1/64 of the total production in the West 40 acres of the South 80 acres of the G. L. Aynesworth Survey, B. R. I. R. No. 49, Abstract No. 1948, Patented to J. A. Driver, dated August 13, 1913, Patent No. 3, Volume No. 47, Young County, Texas.

19.

1/8 or 1/8 or 1/64 of the total production in the East 40 acres of the South 80 acres of the G. L. Aynesworth Survey, B. R. I. R. No. 49, Abstract No. 1948, Patented to J. A. Driver, dated August 13, 1913, Patent No. 3, Volume No. 47, Young County, Texas.

20.

5/8 of 1/8 overriding royalty or 5/64 of total in 40 acres of the South 100 acres of the Sarah Tankersley Survey, Abstract No. 278, known as Lot No. 4, Young County, Texas.

21.

1/16 of 1/8 or 1/128 of the total production in the Southwest 40 acres of the C. E. F. Auburg Survey, Abstract No. 1663, Patent No. 550, Volume No. 11, Patented to C. E. F. Auburg, Young County, Texas.

1419 22.

1/24 of 1/8 or 1/192 of the total production in the Northeast quarter (NE 1/4) of the Northeast quarter (NE 1/4) of Section 32, Township 1 South, Range 8 West, Stephens County, Okla.

23.

1/32 of 1/8 or 1/256 of the total production in All of R. D. Owens Survey, Abstract No. 2245, known as B. R. I. R. Survey No. 38, Patented October 29, 1919, by R. D. Owen, Young County, Texas.

24.

1/16 of 1/8 or 1/128 of the total production in All of the South 80 acres of the J. A. Harkness Survey, Abstract No. 1442, Patent No. 112, Volume No. 9, A. L. Owen Farm, Young County, Texas.

25.

1/4 of 1/8 or 1/32 of the total production in All of the R. D. Owens Survey, Abstract #2245, known as B. R. I. R. Survey No. 38, Patented October 29, 1919 by R. D. Owen, Young County, Texas.

26.

1/24 of 1/8 or 1/192 of the total production in the North 100 acres of the P. J. Humphries Survey, Abstract No. 153, J. W. Hughes Farm, Young County, Texas.

27.

1/48 of 1/8 or 1/384 of the total production in 84 acres more or less out of the W. A. Cannot Pre-Emption Sur-

vey, known as the McClure Farm, Eastland County, Texas.

1420 28.

11/12 of 1/32 of 1/8 or 11/3072 of the total production in the West 50 acres of the South 100 acres of the W. G. Watkins Survey, known as B. F. Eakin Farm, Eastland County, Texas.

29.

1/4 of 1/8 or 1/32 of the total production in the Southeast 50 x 660 feet, known as the J. E. Musick Land, Outer Block No. 20, of the City of Burkburnett, Wichita County, Texas.

30.

3/52 of 1/8 or 3/416 of the total production in a Fifty Acre tract, more or less, a part of the Pedro Varela XI League Grant, said Fifty acres being more particularly described as follows: Beginning at the Southwest Corner of Felix Dancy's tract at a stake in Thurmon's North line: Thence South 45 W 473 varas, with Thurmon's said line to a stake in same; Thence North 45 W 261 vrs. with Thurmon's line to stake in same; Thence North 45 W. 510 vrs. to a stake for corner in Geo. Harris' S. Line: Thence North 45 E 365 vrs with said Harris' S line to his S. E. Corner; Thence South 45 E 512 vrs. with King Dancy's W line to stake in same: Thence North 60 E 311 vrs. to stake in Felix Dancy's W. Line: Thence South 35 E 200 vrs. to the place of beginning, containing Fifty acres more or less, less 6 vrs. off the North end reserved for road, Limestone County, Texas.

1421 31.

1/2 of 1/8 or 1/16 of the total production in 8 1/2 acres out of Outer Block No. 24, of the Outer Blocks of the town

of Burkburnett, as described in Deed, Wichita County, Texas.

32.

1/10 of 1/8 or 1/80 of the total production in the West 1/2 of the Northwest 1/4 of Section 2, Township 15 North, Range 8 East, Creek County, Okla.

33.

1/10 of 1/8 or 1/80 of the total production in the West 1/2 of Northwest 1/4 of Southeast 1/4 Section 28, Township 16 North, Range 9 East, containing 20 acres more or less, known as the Julia Brunner Farm, Creek County, Oklahoma.

34.

1/48 of 1/8 or 1/384 of the total production in a certain tract of land out of the W. H. Smith Survey, conveyed by G. T. Jester and W. R. Bright to W. H. Lee on December 10, 1882, Volume No. 41, Page No. 415, Deed Records Navarro County, Texas, known as J. J. McGaw Farm.

35.

1/48 of 1/8 or 1/384 of the total production in a certain tract of land out of the W. H. Smith Survey, conveyed by G. T. Jester and W. R. Bright to W. H. Lee on December 10, 1882, Volume No. 41, Page No. 415, Deed Records Navarro County, Texas known as J. J. McGaw Farm.

36.

3/7 of 1/8 or 3/56 of the total production in the Northeast 1/4 of Southwest 1/4 of Section 23, Township 16

North, Range 9 East, known as the Bov Davis Farm, Creek County, Oklahoma.

37.

1/16 of 1/8 or 1/128 of the total production in the East one-half of the Southwest 1/4 of Section 29, Township 15 North, Range 10, East, containing 160 acres more or less, known as Mary McIntosh Farm, Creek County, Okla.

38.

3/216 of 1/8 or 3/1728 of the total production in the Northwest 1/4 of Section 15, Township 24, Range 1 West, known as the John W. Lee Farm, Noble County, Okla.

39.

1/16 of 1/8 or 1/128 of the total production in the West One-half of the Southwest 1/4 of Section 29, Township 15 North, Range 10, East, containing 160 acres more or less, known as Mary McIntosh Farm, Creek County, Okla.

40.

1/7 or 1/8 or 1/56 of the total production in Lot 7, Block 2, L & S Second Addition to the town of Burkburnett, known as the River Sand Lease, Wichita County, Texas.

41.

1/20 of 1/8 or 1/160 of the total production in the Southwest 1/4 of Southeast 1/4 of Section 29, Township 15 North, Range 10 East, containing 40 acres more or less, known as Minnie McIntosh Farm, Creek County, Okla.

1423

42.

1/16 of 1/8 or 1/128 of the total production in the Southwest 40 acres of the C. E. F. Auburg Survey, Abstract No. 1663, Patent No. 550, Volume No. 11, Patented to C. E. F. Auburg, Young County, Texas.

43.

1/48 of 1/8 or 1/384 of the total production in a certain tract of land out of the W. H. Smith Survey, conveyed by G. T. Jester and W. R. Bright to W. H. Lee on December 10, 1882, Volume No. 41, Page No. 415, Deed Records Navarro County, known as J. J. McGaw Farm, Navarro County, Texas.

44.

3/64 of 1/8 or 3/512 of the total production in the Southwest 1/4 of Southeast 1/4 of Section 10, Township 24 North, Range 1 West of the I. M. Known as the Joseph A. Novotny Farm, Noble County, Okla.

45.

1/16 of 7/8 or 7/128 of the total production in a tract of land Beginning at the NW corner of NW 1/4 of NE 1/4 of Section 32, Township 16 North, Range 9 East, thence running east along Section line 200 feet, thence South 140 feet, thence West 200 feet, thence North along section line to point of beginning, Creek County, Okla.

46.

3/216 of 1/8 or 3/1728 of the total production in Northwest 1/4 of Section 15, Township 24 North, Range 1 West, known as the John W. See Farm, Noble County, Okla.

1424 47.

1/8 of the total production, being an overriding royalty in the south 1/2 of the Southwest 1/4 of Section 34, Township 12, North, Range 12 East, known as the Ellis Holmes Farm, Okmulgee County, Okla.

48.

3/64 of 1/8 or 3/512 of the total production in the Northwest 1/4 of Southeast 1/4 of Section 10, Township 24 North, Range 1 West of the I. M. known as the Jpseph A. Novotny Farm, Noble County, Okla.

49.

3/64 of 1/8 or 3/512 of the total production in the Southwest 1/4 of Southeast 1/4 of section 10, Township 24 North, Range 1 West of the I. M. known as the Jpseph A. Novotny Farm, Noble County, Okla.

50.

3/64 of 1/8 or 3/512 of the total production in the Northwest 1/4 of Southeast 1/4 of Section 10, Township 24 North, Range 1 West of the I. M. known as the Joseph A. Novotny Farm, Noble County, Okla.

51.

1/32 of 1/8 or 1/256 of the total production in the Southwest 1/4 of Southeast 1/4 of Section 10, Township 24 North, Range 1 West of the I. M. known as the Joseph Novotny Farm, Noble County, Okla.

1425 52.

1/16 of 1/8 or 1/128 of the total production in the Northwest 1/4 of Southeast 1/4 of section 10, Township 24 North, Range 1 West of the I. M. known as the Joseph A. Novotny Farm, Noble County, Oklahoma.

53.

1/8 of 1/8 or 1/64 of the total production in the North 1/2 of the Southwest 1/4 of section 34, Township 12 North, Range 12 East, known as the Ellis Holmes Farm, Okmulgee County, Oklahoma.

54.

1/4 of 1/8 or 1/32 of the total production in the South 1/2 of the Southwest 1/4 of Section 34, Township 12 North, Range 12, East known as the Ellis Holmes Farm, Okmulgee County, Okla.

55.

1/8 of 1/8 or 1/64 of the total production in the North 1/2 of the Southwest 1/4 of Section 34, Township 12 North, Range 12 East, known as the Ellis Holmes Farm, Okmulgee County, Okla.

57.

3/16 of 1/8 or 3/128 of the total production in all of B. R. I. R. No. 39, J. E. Dowdle Survey Abstract No. 2215, Containing 160 acres, Young County, Texas.

58.

1/64 of 1/8 or 1/512 of the total production in West 1/2 of Northeast 1/4 of Section 34, Township 25 North, Range 1 West, of the I. M. Kay County, Okla.

1426

59.

3/640 of 1/8 or 3/5120 of the total production in the East 1/2 of Northeast 1/4 of Section 34, Township 25 North, Range 1 West, of the I. M. Kay County, Okla.

60.

1/320 of 1/8 or 1/2560 of the total production in the Northwest 1/4 of Section 34, Township 25 North, Range 1 West, of the I. M., Kay County, Okla.

61.

1/256 of 1/8 of 1/2048 of the total production in Lot Nos. 1 and 2 and the South 1/2 of Northeast 1/4 of Section e, Township 24, North Range 1 West, of the IM Noble County, Okla.

62.

9/40 of 1/8 or 9/320 of the total production in the North 1/2 of the Southwest 1/4 of Section 34, Township 12 North, Range 12 East, known as the Ellis Holmes Farm, Okmulgee. County, Okla.

63.

1/32 of 1/8 or 1/256 of the total production in the West 1/2 of 100 acre tract out of the Northeast corner of J. B. Barry Survey, Abstract 82, known as the W. A. Brown Farm, Navarro County, Texas.

64.

1/8 of the 1/8 Fee Royalty in the West 30 acres of the East 50 acres of the North 80 acres of Block 1598, Texas Immigration and Land Company Survey, L. M. Hayter Land, North 100 acres of South 240 acres of Block 1598, W. O. Hayter Land, Archer County, Texas.

1427

65.

1/16 of the 1/8 Fee Royalty in Block 46 of the Meade L. M. Pasture Subdivision of the D. G. Thomas Survey, Abstract 458, Archer County, Texas.

66.

1/16 of the 1/8 Fee Royalty in Block No. 9 of the Crawford Pasture Subdivision of the Isaac Holman Survey, Archer County, Texas.

67.

1/16 of the 1/8 Fee royalty in the N 40 acres of Block 21; S 32 acres of Block 21; S 60 acres of W 80 acres of Block 22; and E 60 of W 160 of Block 19, Anderson South Pasture Subdivision, Archer County, Texas; N 25 acres of E 50 of W 100 of Block 19.

68.

1/4 of the 1/8 Fee Royalty in the E 30 acres of a 71 acre tract of land out of the D Milligan Survey, conveyed to A. J. Mathis, by W. H. Clements and wife, H. J. Clements, on the 4th day of Dec. 1907, said deed being recorded in Vol. 43, Page 116, Deed Records of Callahan County, Texas.

69.

1/8 of the 1/8 Fee Royalty in E. Pankonin Sur. No. 1700 and L. Pankonin Sur. No. 1701, known as E 1/2 of Section 4 B. B. B. & C. R. R. Co. Survey, Cert. 692, Young and Archer Counties, Texas.

70.

1/4 of 1/8 overriding royalty in the South 40 acres of the North 60 acres of the West 1/2 of the Northeast 1/4 of Section 83, Block 14, H. & T. C. R. R. Co. Survey, Wilbarger County, Texas.

1428

71.

1/32 of the 1/8 Fee Royalty in All of the West one-half of the Southeast one Fourth of Section 43 in Block 24 H

& G N Ry. Co. Survey in said County, containing 80 acres of land more or less, Wheeler County, Texas.

72.

1/16 of the 1/8 Fee Royalty in all of the Northeast one-fourth of Section 47, Block 24, H & G N Ry. Co. Survey in Wheeler County, Texas.

73.

1/32 of the 1/8 Fee Royalty in all of the East one-half of Section No. 54, in Block 24, H & G N Ry. Co. Surveys, containing 320 acres more or less, Wheeler County, Texas.

74.

1/16 of the 1/8 fee royalty in All of the East one-half of Section No. 57 in Block 24, H & G N Ry. Co. Survey in Wheeler County, Texas, containing 320 acres of land more or less.

75.

1/16 of the 1/8 royalty in all of the North one-half of Section 45, Block 24 H & G N Ry. Co. Surveys, in Wheeler County. Texas.

76.

1/8 of the 1/8 royalty in the South half of section 61 Block 25, H & G N Ry. Co. surveys containing 320 acres of land, more or less, Gray County, Texas.

1429 77.

1/4 of the 1/8 royalty in the West half of the Southeast quarter and the Northeast quarter of the Southeast

quarter, of Section 59 in Block 25 H & G N Ry. Co. Surveys containing 120 acres of land more or less, Gray County, Texas.

78.

1/8 of the 1/8 royalty in the Northwest quarter of section 60, Block 25, H & G N Ry Co. Surveys, containing 160 acres more or less, Gray County, Texas.

79.

1/2 of the 1/8 royalty in the South half of the Northeast Quarter of Section 35, Township 19 North, Range 21 West, containing 80 acres, Ellis County, Oklahoma.

80.

1/16 of the 1/8 of the royalty in All of Section No. 54, as the same is shown by the W. D. Twitchell map of the Subdivisions of the Bravo Ranch lands, located in Hartley County, Texas, containing 640 acres more or less.

81.

1/4 of the 1/8 royalty in all of section 206, Block No. 3, Certificate No. 1/632 issued to the Texas and Pacific Railway Company, and containing 640 acres, Pecos County, Texas.

1430 The Witness:

It said it was dismissed July 9, 1930, I copied that off of the record.

Mr. Boone:

It is agreed that suit No. 24,201-C was dismissed on the docket on July 9, 1930.

The Witness:

We did close out the Stephens Royalty in Wilbarger County, but I would not be able to say that it was for the purpose of paying on this particular note and having the suit dismissed. The money I got on the Stephens Royalty I turned over to Mr. Harrell, and it is my memory that the suit was dismissed, that is, Mr. Harrell, in the City National Bank, and I think he credited it on the note they had sued on, involved in this present lawsuit. Check No. 930, we have the entry on the ledger that we placed that check, $2,889.08 to notes payable City National Bank, cut down to $22,000.00; that is the only note we had in the City National Bank. We had John Davenport at that time, Davenport and Crane were paid $500.00 on June 24, and Kilgore and Rogers were employed and paid $100.00 on June 25, but it says, for advice, whether it was continuous employment or what it was, I couldn't tell you. I think it was advice in connection with this lawsuit. Check No. 930, Plaintiff's Exhibit 143, being a check on the Wichita Royalty Company, signed by E. E. Scannell for trustee, that was in 1930, and I was trustee, it is payable to the City National Bank in the amount of $3,055.42, dated July 14. That check was paid and charged to our account, the voucher says, "Notes payable to payment on note and interest,"

1431 and then an ink notation was put on there and showed that it was principal, $2,889.08 and interest $166.34, making a total of $3,055.42. I will say that I did whatever I could and did the best I could with the money we had available, on liquidating that note as quickly as possible; I had consulted with Davenport and Crane in this matter. I had also given Kilgore and Rogers a check for $100.00 and consulted them. Mr. Davenport and Mr. Kilgore sat in on that, I am not sure, it was done at Mr. Humphrey's office, or something about, we had a meeting up there one morning. Mr. Humphrey can tell you more about it than I can from the legal aspect. Check No. 908 was paid to Texas Investment Company and our voucher

reads, "Interest on Marlborough notes." and then it says, "Notes receivable, Texas Investment Company of Wichita Falls." In this suit that was filed, in which I was served, we were also sued for the indebtedness due and owing the Texas Investment Company as shown by paragraph 8 of this petition. which says, "that the said defendant is also indebted, on other obligations as a maker and indorser, among which is an obligation of the Texas Investment Company for $23,500.00. Another obligation of the Texas Investment Company for $5,000.00. Another obligation, Texas Investment Company for $5,000.00." I do not know what the agreements were as to the dismissal of that suit, if there was any agreement, let me see the agreement, I don't remember what it was.

Check No. 971, dated December 27, 1930, is Kilgore and Rogers for $200.00, and indorsed by them.

1432 Check No. 980, dated March 14, 1931, is to Kilgore and Rogers in the amount of $200.00, and the voucher reads, "Legal services to apply relative suits, City National Bank versus Wichita Royalty Company." It was indorsed by them and paid. Check No. 990, dated April 15, 1931, made payable to Kilgore and Rogers, in the amount of $100.00 indorsed by Kilgore and Rogers, and says, "legal services, in re suit City National Bank versus Wichita Royalty Company." Paid 4-22-31. Check No. 1,000 dated May 20, 1931, made to Kilgore and Rogers, attorneys-at-law, amount $100.00 indorsed Kilgore Rogers and paid 5-21-31. The voucher shows "Legal expense to apply on payment of counsel relative to City National Bank, G. W. Peckham." Check No. 1,012, dated August 4, 1931, Rogers and Kilgore, $100.00, indorsed Kilgore and Rogers. Paid 8-7-31. All of that money was paid to Kilgore and Rogers prior to the time this suit was tried in the State District Court in Wichita County, Texas, in 1932. Check No. 1,030, Kilgore and Rogers, attorneys-at-law, dated February 16, 1932, in the amount of $148.71, legal services to apply expenses incurred, their itemized statement in connection with suit, City National

Bank, indorsed Kilgore and Rogers by Guy Rogers. Paid 2-17-32. Check No. 1,031, dated February 16, 1932, made payable to Kilgore and Rogers in the amount of $750.00 legal expenses to apply suit City National Bank indorsed Guy Rogers and paid on February 17, 1932. Check No. 1,035, dated December 5, 1932, payable to Guy Rogers in the amount of $50.00, legal ex-
1433 pense in connection with lawsuit, Kilgore and Rogers, traveling expenses, Fort Worth and Austin, Wichita Royalty Company versus City National Bank, indorsed by Guy Rogers, paid 12-5-33. Check No. 1,047, I think that is a little period in there of four or five checks, we do not have the actual return back from the bank. The voucher, Check No. 1,047, dated December 27, 1934, check payable to Guy Rogers in the amount of $223.26 and says, "Legal expense to apply to payment Judge Black at Austin." Check No. 1,049, dated May 29, 1936, Kilgore and Rogers $550.00, legal expense to apply expense Oklahoma, garnishment, etc., in regard to suit Wichita Royalty Company and City National Bank. Check No. 1,060, to Kilgore and Rogers in the amount of $750.00, the voucher, "To apply on expense of counsel in connection with settlement of City National Bank suit, clerical expense $450.00, traveling expense $100.00, printing, office expense $150.00, telegraph and telephone $35.00, postage $15.00, and the check is indorsed by Kilgore and Rogers and paid 6-23-36. Check No. 1,066, made payable to Guy Rogers, $25.00, dated September 15, 1936, the voucher says, "Traveling expenses in connection with Federal Court hearing in Dallas, September 12, before Judge Atwell." That check is indorsed by Guy Rogers and paid September 28, 1936. Check No. 1,071, dated December 7, 1936, made payable to Kilgore and Rogers, Attorneys-at-law, in the amount of $500.00, the voucher reads, "To apply on expense of taking testimony before Federal Court in Wichita Falls versus City National Bank, check deposited to
1434 Kilgore and Rogers and paid December 8, 1936. Journal entry No. 1, 1935, $115.48, legal

services, credit cash on hand, turned cashier's check over to Guy Rogers, in the amount of $115.48. Journal entry April 6, 1935, debit legal services Kilgore and Rogers, $354.09, credit cash on hand, that was April, 19—I don't remember the date now. It reads "full amount of runs collected during April turned over to Kilgore and Rogers to apply on legal services in connection with suit with City National Bank." That is during the time I was out of town and these checks were turned over to Mr. Rogers in that amount. They received the proceeds therefrom.

Mr. Rogers:

I received those personally, my notation shows that they were received June 1, 1935.

The Witness:

Journal entry April 8, 1935, $203.84, legal services Kilgore and Rogers; we gave Mr. Rogers a cashier's check in that amount. Journal entry No. 11, legal services Kilgore and Rogers, $158.16, cash on hand, and we gave Mr. Rogers a cashier's check in that amount. Journal entry No. 12, legal services Kilgore and Rogers, $148.25, paid from cash on hand, and we gave Mr. Rogers a cashier's check for that amount. Those last items were during 1935. Turning back to journal entry—back to 1932, journal entry No. 3, legal expense, $357.43, cash on hand $357.43, money turned over to Guy Rogers, Attorney, in payment of expenses in preparing to submit lawsuit to higher Court; I entered it December 31, 1932, and we paid Mr. Rogers Cashier's Check $126.91,
$126.11, and $104.41, which constitute the sum
1435 of $357.43. Our cash memo No. 2,458 recites
$540.20 to pay Kilgore and Rogers, by District Clerk Trust fund No. 796, refund of transcript fee, $86.50 to statement of facts, $453.70, which makes $540.20. That deposit was to our bank account—I mean the Wichita Royalty Company. We received $1,033.12 from the Humble Oil and Refining Company, from the Court,

May 26, 1936, we deposited—took it into our account May 29th, and the amount of that check from the Humble was $1,033.12, and we received from the Panhandle Oil and Refining Company, $18.60, a total of $1,051.72. That money was deposited to the Wichita Royalty Company account in the First National Bank. Then in June, 1936, we got $2,640.03, Panhandle Oil Company, drawn on the First National Bank of Fort Worth, $2,640.03, it went into the deposit of the Wichita Royalty Company, our memo 2460, and we got $220.53 from the Sinclair Prairie A total of $2,946.12. June 15, we got garnishment judgment and interest, R. L. Sanford, District Clerk. Trust fund No. 870, $491.10, deposited to the Wichita Royalty Company account. June 15, we got Texas Company's voucher F-101, in the amount of $72.37, which went to the deposit of Wichita Royalty Company and that is all I can distinguish. The $86.50 is refund of transcript fee, in the statement of facts, $453.70, which made up the total of $540.20.

In addition to these funds paid to Kilgore and Rogers, as well as John Davenport, we have a contract with Kilgore and Rogers. I will try and produce that
1436 contract. In addition thereto, we gave the deed of trust to all of these properties in Texas belonging to Wichita Royalty Company, as well as mortgage on the properties belonging to the Wichita Royalty Company in Oklahoma, and those properties were sold to Guy Rogers as trustee for $250.00, in August, 1934, as shown by the trustee deed heretofore introduced in evidence. I did not get that $250.00. I have never notified the stockholders that I had given this deed of trust on all of the property, and this mortgage. There has been no communication with the stockholders directly in regard to the sale for $250.00, no bulletin has been sent out. I don't recall when the last bulletin was sent out, I think it was after the case was reversed by the Supreme Court. I did not tell in those communications that I have given the attorneys half of all they could recover. I do not intend to keep the stockholders in

the dark. I will try and find the last date I sent out a letter to the stockholders, I think Defendant's Exhibit 34, January 15, 1934, is the last one. I have talked to a good many of them, I don't remember what I told them, I talked to them about the case, just the specific statements, I would not remember. I did not tell the stockholders I paid out $10,000.00 in attorneys fees, that I remember, nor in regard to a half interest being assigned to the attorneys. We talked over the case, and the ultimate outcome, and things of that kind. When they asked me questions, I would try to answer them
1437 the best I could and told them what I knew about it. As to what is covered by the Oklahoma mortgage, that is a legal matter, and I am not familiar with it, but, whatever is gotten out of this suit I intend to give a mortgage on that. Plaintiff's Exhibit 27 is the mortgage, and it says, such property either personal or real, whatsoever description and wheresoever situated, such properties as we had, or that we might own. I cannot tell you whether we own anything in this lawsuit or not, we are contending for it. I intended to give a mortgage on certain properties we have. I would not be able to tell you without referring to the record, whether there has been any transfer of stock by the stockholders or not, since this lawsuit was filed, I will get that for you. The $19.00 worth of portage on May 31, 1936 had accumulated over a long period of time it is a book entry, I will look that up for you.

Mr. Humphrey:

We offer in evidence all of the checks in two separate batches, as follows:

(Exhibits marked "Plaintiff's Exhibit 194 and 195")

Date	No.	Amount	Payee	Drawn On	Signed	Perforated	Teller	Indorsed
6-25-30	923	100.00	Guy Rogers	City Nat'l	E. E. S. for tr.	6-27-30	–	Guy Rogers
9-29-3–	952	600.00	Kilgore & Rogers	City Nat'l	E. S. S. tr.	9-30-30	7	Kilgore & Rogers
10-16-30	957	400.00	Kil. & Rog.	Security Nat'l	E. E. S. tr.	10-17-30	2	Kil. & Rog.
12-27-30	971	200.00	Kil. & Rog.	Security Nat'l	E. E. S. tr.	12-30-30	2	Kil. & Rog.
3-14-31	980	200.00	Kil. & Rog.	Security Nat'l	E. E. S. tr.	3-16-31	–	Kil. & Rog.
4-15-31	990	100.00	Kil. & Rog.	Security Nat'l	E. E. S. tr.	4-22-31	2	Kil. & Rog.
5-20-31	1000	100.00	Kil. & Rog.	City Nat'l	E. E. S. tr.	5-21-31	3	Kil. & Rog.
8- 4-31	1012	100.00	Kil. & Rog.	City Nat'l	E. E. S. for tr.	8- 7-31	5	Kil. & Rog.
2-16-32	1030	148.71	Kil. & Rog.	First Nat'l	E. E. S. tr.	2-17-32	–	Kil. & Rog.
2-16-32	1031	750.00	Guy Rogers	First Nat'l	E. E. S. tr.	2-17-32	–	Guy Rogers
12- 5-33	1035	50.00	Guy Rogers	First Nat'l	E. E. S. for tr.	12- 5-33	1	Guy Rogers
12- 9-33	1036	250.00	Chas. L. Black	First Nat'l	E. E. S. for tr.	12- 8-33	6	None
5-29-36	1048	500.00	Chas. L. Black	First Nat'l	E. E. S. tr.	5-29-36	6	None
5-28-36	1049	550.00	Kil. & Rog.	First Nat'l	E. E. S. tr.	5-28-36	6	None
5-31-36	1053	1,351.85	Chas. L. Black	First Nat'l	E. E. S. tr.	6- 6-36	6	None
5-31-36	1,060	750.00	Kil. & Rog.	First Nat'l	E. E. S. for tr.	6-23-36	6	Kil. & Rog.
9-15-36	1066	25.00	Guy Rogers	First Nat'l	E. E. S. tr.	9-28-36	8	Guy Rogers
12- 8-36	——	500.00	Rog. & Kil.	First Nat'l	E. E. S. tr.	12- 8-36	3	Dep. Kil. & Rog.
12-31-29	868	400.00	E. E. Scannell	City Nat'l	E. E. S. for tr.	1- 2-30	–	E. E. Scannell
1-31-30	883	200.00	E. E. Scannell	City Nat'l	E. E. S. for tr.	2- 6-30	–	E. E. Scannell
2-15-30	889	200.00	E. E. Scannell	City Nat'l	E. E. S. for tr.	2-18-30	–	E. E. Scannell

2-28-30	892	200.00	E. E. Scannell	City Nat'l	E. E. S. for tr.	3- 2-30	–	E. E. Scannell
3-15-30	896	200.00	E. E. Scannell	City Nat'l	E. E. S. for tr.	3-22-30	–	E. E. Scannell
5-31-30	897	200.00	E. E. Scannell	City Nat'l	E. E. S. for tr.	4- 5-30	–	E. E. Scannell
4-15-30	903	200.00	E. E. Scannell	City Nat'l	E. E. S. for tr.	4-16-30	–	E. E. Scannell
4-30-30	905	200.00	E. E. Scannell	City Nat'l	E. E. S. for tr.	5- 1-30	–	E. E. Scannell
5-16-30	909	200.00	E. E. Scannell	City Nat'l	E. E. S. for tr.	5-17-30	–	E. E. Scannell
5-31-30	912	200.00	E. E. Scannell	City Nat'l	E. E. S. for tr.	6- 5-30	–	E. E. Scannell
6-13-30	917	180.00	E. E. Scannell	City Nat'l	E. E. S. for tr.	6-13-30	–	E. E. Scannell
6-13-30	918	200.00	E. E. Scannell	City Nat'l	E. E. S. for tr.	6-13-30	–	E. E. Scannell
6-25-30	922	200.00	E. E. Scannell	City Nat'l	E. E. S. for tr.	6-28-30	–	E. E. Scannell
7-16-30	931	200.00	E. E. Scannell	City Nat'l	E. E. S. for tr.	8- 1-30	–	E. E. Scannell
7-31-30	936	200.00	E. E. Scannell	Security Nat'l	E. E. S. for tr.	8- 7-30	–	E. E. Scannell
8-15-30	939	200.00	E. E. Scannell	City Nat'l	E. E. S. for tr.	8-27-30	2	E. E. Scannell
								H. A. Richardson
8-30-30	940	200.00	E. E. Scannell	City Nat'l	E. E. S. for tr.	9- 3-30	2	E. E. Scannell
9-18-30	949	200.00	E. E. Scannell	Security Nat'l	E. E. S. for tr.	9-23-20	3	E. E. Scannell
9-29-30	953	400.00	E. E. Scannell	Security Nat'l	E. E. S. tr.	9-30-30	4	E. E. Scannell
10-16-30	958	200.00	E. E. Scannell	Security Nat'l	E. E. S. for tr.	10-18-30	–	E. E. Scannell
(Pencil Notation: Mr. Scannell says this should be drawn on 88-1899) NSF.								
11-14-30	963	200.00	E. E. Scannell	Security	E. E. S. for tr.	11-14-30	1	E. E. Scannell
(Indorsement canceled) NSF 88-130.								
12- 1-30	968	200.00	E. E. Scannell	Security	E. E. S. for tr.	12- 6-30	2	E. E. Scannell
12-15-30	969	200.00	E. E. Scannell	Security	E. E. S. for tr.	12-19-30	–	E. E. Scannell

Date	No.	Amount	Payee	Drawn On	Signed	Perforated	Teller	Indorsed
12-30-30	973	200.00	E. E. Scannell	Security	E. E. S. for tr.	12-31-30	2	E. E. Scannell
1- 9-30	—	145.00	E. E. Scannell	Security	E. E. S. for tr.	1- 8-31	4	E. E. Scannell
1-14-31	978	255.00	E. E. Scannell	Security	E. E. S. for tr.	—	3	E. E. Scannell
			(Void)					
3-24-31	983	100.00	E. E. Scannell	Security	E. E. S. for tr.	3-24-31	–	E. E. Scannell
4- 1-31	986	150.00	E. E. Scannell	Security	E. E. S. for tr.	4- 2-31	3	E. E. Scannell
4-15-31	992	200.00	E. E. Scannell	Security	E. E. S. for tr.	4-18-31	3	E. E. Scannell
4-29-31	994	100.00	E. E. Scannell	Security	E. E. S. tr.	4-29-31	1	E. E. Scannell
5-20-31	999	200.00	E. E. Scannell	City Nat'l	E. E. S. tr.	5-20-31	4	E. E. Scannell
6-12-31	1005	140.00	E. E. Scannell	City Nat'l	E. E. S. for tr.	5-13-31	6	None
7- 2-31	1006	60.00	E. E. Scannell	City Nat'l	E. E. S. for tr.	7- 2-31	–	E. E. Scannell
7- 1-31	1008	200.00	E. E. Scannell	City Nat'l	E. E. S. for tr.	7- 8-31	3	E. E. Scannell
7-31-31	1013	200.00	E. E. Scannell	City Nat'l	E. E. S. for tr.	8- 7-31	–	E. E. Scannell
8-31-31	1016	200.00	E. E. Scannell	City Nat'l	E. E. S. tr.	9- 2-31	4	E. E. Scannell
10- 1-31	1018	200.00	E. E. Scannell	First Nat'l	E. E. S. for tr.	1- 1-31	–	E. E. Scannell
10- 7-31	1020	3.35	E. E. Scannell	City Nat'l	E. E. S. for tr.	10- 8-31	2	E. E. Scannell
10-29-31	1023	200.00	E. E. Scannell	First Nat'l	E. E. S. for tr.	10-29-31	3	E. E. Scannell
12- 1-31	1026	200.00	E. E. Scannell	First Nat'l	E. E. S. for tr.	12- 5-31	3	E. E. Scannell
1- 1-32	1027	225.00	Cashiers Check	First Nat'l	E. E. S. for tr.	1- 8-32	6	None
2- 2-32	1028	400.00	E. E. Scannell	First Nat'l	E. E. S. for tr.	2- 3-32	3	E. E. Scannell
2-25-32	1032	95.00	E. E. Scannell	First Nat'l	E. E. S. for tr.	2-25-32	3	E. E. Scannell
2-23-34	1042	150.00	E. E. Scannell	First Nat'l	E. E. S. for tr.	2-23-34	–	E. E. Scannell

5-29-36	1050	541.92	E. E. Scannell	First Nat'l	E. E. S. for tr.	5-28-36	6	None
5-29-36	1051	2,860.56	E. E. Scannell	First Nat'l	E. E. S. tr.	—	–	None
			(Canceled)					
5-29-36	——	2,860.56	E. E. Scannell	First Nat'l	E. E. S. tr.	5-29-36		
(Notation: To be held for a later accounting and distribution).								
5-31-36	1052	28.90	E. E. Scannell	First Nat'l	E. E. S. tr.	6- 5-36	–	E. E. Scannell
6- 6-36	1054	1,508.71	E. E. Scannell	First Nat'l	E. E. S. tr.	None		None
			(Canceled)					
6- 6-36	No...	1,508.71	Cashier ck.	First Nat'l	E. E. S. tr.	6- 6-36	6	None
4-14-34	1054	256.94	E. E. Scannell	First Nat'l	E. E. S. for tr.	4-14-34	4	E. E. Scannell
5-31-36	1055	563.47	E. E. Scannell	First Nat'l	E. E. S. tr.	6-15-36	–	None
			(Cash. ck.)					
6-30-36	1061	69.55	E. E. Scannell	First Nat'l	E. E. S. for tr.	7- 2-36	3	E. E. Scannell
7- 5-36	1064	50.00	E. E. Scannell	First Nat'l	E. E. S. for tr.	7- 6-36	3	E. E. Scannell
(Stamped Western Union Telegraph Co. by Fred Hyer, Cashier)								
6- 6-34	1055	273.56	E. E. Scannell	First Nat'l	E. E. S. for tr.	6- 7-34	3	E. E. Scannell (Cancelled)
1- 5-37	1072	109.81	E. E. Scannell	First Nat'l	E. E. S. tr.	1- 4-37	6	None

1442 The Witness:

The journal of the Wichita Royalty Company for 1936, speaks the truth, on March 31, 1936, I wrote in there, "Notes receivable $2,000.00." As I recall that, that is an item carried forward from the previous year of $1,-500.00 and $500.00 check, money that went to the Texas Investment Company of Wichita Falls. We paid it in there, I think, as I remember it, everybody put some money into the Texas Investment Company down there to take care of expense. I haven't changed the books since it was originally set up, just carried along over previous years. We are suing the bank for the identical items, I think that comes out of the Texas Investment Company end of it. I don't know whether we were still claiming the stock of the Texas Investment Company on May 31, 1936 or not, that was just carried forward from year to year. That is in my handwriting. Until something is done finally and ultimately, in some way, I don't know what else to do with it. I wish you would ask the auditors to explain that, until some change is made, I have just carried it forward from year to year. I am the bookkeeper, and I am the trustee, and I wrote that. As I told you before, I have made no adjustment on our records as to the properties, that were tendered back, etc., just carried them forward from year to year. and when it is finally washed up we will have an audit made and the adjustment will be made on the books to show how it should be—that is the best I can explain it. I don't think we have ever had a complete audit made. Voucher No. 1021, October 13, 1931, reads, "To recovery of money due Wichita Royalty Company on Harvester lease, in the L. A. Wilkins Howard from June, 1921 to June, 1931, to W. W. Johnson." He is from Dallas and that is his business. He might be an auditor. His business is checking up oil company books.

1443 In order to explain that a little bit, for instance, like the Magnolia Company, he or someone gets information on their records as to oil in suspense, that you do not know about and he collects the oil for you.

I don't know how I have it down there, whether I have it as an audit or not, May 31, 1931. I did employ Mr. Sheppard sometime this past summer, his firm has always looked after our matters, helped us with our tax returns. He never made an audit for me, to my knowledge, either before I was trustee or afterwards. I have the voucher on check No. 1,181, January 2, 1923, and it shows, "Sheppard-Crouch Company, $120.00, for supervising and audit work months of November and December, 1922." Check No. 45, August 13, 1923, Sheppard-Crouch Company, $360.00, audit service up to and including May 31, 1923, that was not for audits, that was for helping us supervise the carrying on of the business, that was with reference to questions that came up as to how the entries should be made. Check No. 264, September 5, 1924, Sheppard-Crouch Company, $105.00, audit and tax service August 1, 1924, that was for helping us with our tax returns and advising with reference to entries, etc., and not for an audit. Check No. 396, 1925, July 21, to Sheppard-Crouch Company, to preparing tax return for fiscal year ending May 31, 1925, $60.00. Check No. 475, Dated February 20, 1926, Sheppard-Crouch Company, $85.00, voucher reads, "Accounting service August 15, 1925, to date, $85.00." George Peckham was not keeping an audit of his books during
that time, those amounts were not forwarded,
1444 they were for tax work. The tax return, as I recall it, was to go out in August. We were always advising with them and letting them show us certain things that should be handled in a certain way. Every few days we were going to the auditors and asking them questions about how to handle certain entries. George Peckham wanted to keep it straight and I was trying to keep it straght, too. I guess George Peckham was keeping a check on me. Check No. 522, Sheppard-Crouch Company, $12.50, the voucher reads, "accounting service to date." That was probably some little item, the check was issued July 7, 1926. Check No. 698, March 19, 1928, Sheppard-Crouch Company, $550.00,

that was audit valuation services in payment of services for preparing income tax report for fiscal year ending May 31, 1927. Check No. 744, dated August 10, 1928, Sheppard-Crouch Company, $25.00, accountants Services and supervision and review income tax return for fiscal year ending May 31, 1928. Check No. 834, dated August 10, 1929, to Sheppard-Crouch Company, $25.00, for services rendered to date. George Peckham told me to keep these books, and I advised with Sheppard-Crouch Company.

The first check paid out for auditing or advice is dated May 31, 1936, No. 1,059, I hired him about that time to work on this lawsuit, and give me whatever advice I needed in regard to this, that is, Mr. Sheppard. Mr. Crouch had always handled our work, or the major portion of it, then he left and Mr. Sheppard has advised with me when I needed anything since that time. It
1445 was 1936 when we started working on this lawsuit, this accounting. Mr. Crouch is a Certified Public Accountant and Mr. Sheppard is a master of business administration from Harvard University, much better than a Certified Public Account in classification, as I understand it. On May 31, 1936, we paid him $750.00, the voucher shows, "To apply on audit, Wichita Royalty Company's books, $500.00, to apply on traveling expenses in connection with looking after the company's lawsuit, City National Bank, $250.00, total of $750.00." Check No. 1,067, September 15, 1936, to G. L. Sheppard for $35.00, traveling expense in connection with Federal Court Hearing, Dallas, September 12, before Judge Atwell. Check No. 1,068, October 27, 1926, to G. L. Sheppard, $500.00, to advice on auditing expenses in connection with City National Bank suit against Wichita Royalty Company. Check No. 1,070, dated December 7, 1936, G. L. Sheppard, $300.00, to apply on expense audit Wichita Royalty Company, City National Bank suit. Between May 31, and December 7, 1936, I paid G. L. Sheppard $1,585.00. Another item $500.00, says, "Audits and income tax," I will have to

look into that. In addition to the lawyers' fees, etc., I have paid Mr. Sheppard whatever the record shows. It is problematical as to what the stockholders of the Wichita Royalty Company are going to get, but they are going to get every cent that it is possible to give them when the lawsuit is settled. As it is now, Mr. Harrell and Mr. Bill Peckham are trying to grab it all.

I think I testified on the trial of this case before that I had a contract with the lawyers, as follows: "Q. In that contract it is provided that you were to give them a contingent fee of one-half?"

1446

"A. Yes, sir, I made the contract and notified my stockholders of the situation, wrote them a letter telling them what it was." I don't know exactly what that is referring to on the other trial, that might have been what I told them in regard to the lawsuit, and not in regard to the contract. It is true that I made a contract with my lawyers, and I will get the contract for you. The intention of the contract is to see that Mr. Rogers was paid for his services in connection with the Wichita Royalty Company.

Here is the account of the Wichita Royalty Company, November 7, 1929, at the time of George Peckham's death, which shows that the Wichita Royalty Company had on deposit in the City National Bank, $1,022.84. November 1, shows a balance of $1,022.84 it shows the balance changed on November 8, 1929 to $1,002.92. This is the record of the statements as received from the City National Bank month by month, they are bound consecutively, the beginning entry is February 28, 1923. On June 1, 1932, we had $85.83 in the City National Bank, and $64.00 in the First National Bank. When the checks were returned from the bank, the vouchers and the checks were kept in the office of the Wichita Royalty Company. I could not say that I personally inspected each check as they were returned, but they came under my supervision and have been under my supervision since January, 1923. I could not say that every voucher was made under my super-

1447

vision, perhaps I was not there sometimes. I could have seen it when I returned, I have been in and out of the office all the time. Each transaction of property and the receipts, as well as the payments therefor, were reflected on our books, vouchers and checks, who the check were payable to and the checks showed the indorsement on them. There might have been some time when the checks were not returned every thirty days, but we have most every one of the checks here. I think if any stockholder had come in and approached Mr. Peckham or me, they could have inspected the books, after I became trustee if they had wanted to see the records, I would have been glad to show them what I could. As far as I know, the notices sent out to the stockholders reflected the truth. I have sent out two or three since I became trustee.

I made an income tax report for the company after George went in, as well as since I became trustee, I will be glad to get those for you. Those income tax reports speak the truth. The income tax reports were never questioned by the government. I swore to them.

I have not found journal entries Nos. 18, 26, 27, 28, and 29, I will continue to hunt for them.

I cannot get the income tax report for 1936 right now, I will have to get those out of the files.

1448 I knew that all banks were in bad condition in 1933, when they were closed. The crash in the stockmarket was in 1929. I knew of the reorganization of the City National Bank here in March, 1933, I knew when the new bank was opened, of course, I didn't know any of the inside matters.

Cross Examination.

By Mr. Morrow:

I will produce the reports that were furnished to the stockholders, I think there are several others besides the one dated February, 1931 and the one dated January, 1934. I wrote the report sent out February 2, 1931, whether the stockholders received the reports, I do not know.

I never received any report from any stockholder protesting the fact that we had instituted this suit against the City National Bank, that I know of. So far as I know, no stockholder has objected to the fact that I was handling everything, all I did hear from told me to go ahead and exercise my own judgment, I heard from quite a few. I think on a few occasions stockholders came here during George Peckham's lifetime. They seemed to be satisfied, I cannot remember that any of them raised any controversy, I remember one woman came down here. George Peckham, like any other employer, expected his employees to keep his books secret from the public generally.

Voucher No. 478, March 6, 1926, shows the voucher notation is written in original typewriting, the checks are in carbon and the information is written in original typewriting; that is also true of check No. 479, drawn March 6, 1926, for $6,000.00. Those voucher
1449 notations were put in there some time later, just how long I could not tell you.

Journal Entry February 28, 1926, No. 24, deals with royalty income, estimated for the month of February, at the end of the month I would set up the journal entry, of estimated income, before we knew what it actually was. Journal entry No. 25, the next one, is the reverse of journal entry No. 24. Then the next entry, No. 26, dated March 31, 1926, accounts receivable, oil runs estimated royalty income, to set up oil runs estimated to March 31, 1926, for which checks have not been received to this date, $6,590.45. That was the last entry made in the journal for the month of March, 1926. The next journal entry is No. 27, which sets up in our journal for the first time the notation to the effect that we had acquired what is known as the Marlborough property; that is the same date, in substance, that is on these vouchers, Nos. 478 and 479 in original typing, and I think it was about March 31, that those entries on those vouchers were made, however, I couldn't say when it was, that was written by my associate bookkeeper and I cannot tell you just the date. In the ordinary

course of business, if I had had the notation before the end of the month I would have put it in there—the original vouchers were blank.

1450 J. T. HARRELL, recalled for further direct examination by Mr. Boone, testified as follows:

I have been on the stand before in this case. I remember the Stephens Royalty transaction in Wilbarger County, Texas. I will detail the transaction pertaining to what is commonly referred to in the suit as the Stephens Royalty and the Curlee Royalty; sometime about the 18th of January, 1924, W. A. Stephens and others, conveyed to Daniel Bond of Vernon, Texas, an oil and gas leasehold estate of 7/8 of the minerals for a consideration of $6,000.00 recited in the instrument, which instrument was filed for record January 31, 1934, in the deed records of Wilbarger County, as per copy thereof; this leasehold estate consisted of the north sixty acres of the west half of the northeast quarter of section 83, block 14, of the H. & T. C. Railway Company Survey, in Wilbarger County, Texas. In the purchase of this property it was the agreement and understanding that same was being purchased for the use and benefit of Daniel Bond, one-half interest; C. E. Basham one-fourth and J. T. Harrell one-fourth. In the consummation of this deal J. T. Harrell gave his check in payment of his one-fourth interest on or prior to February 2, 1924. The check has been lost, but the City National Bank of Wichita Falls paid this check as shown by ledger sheet of J. T. Harrell on February 2, 1924, to which reference is made. That bank account is in evidence. As

1451 to the purchase of this lease, same remained in the name of Daniel Bond, Vernon, Texas, as a matter of convenience to the three parties, and thereafter on or about the first of October, 1924, Daniel Bond conveyed a 6/8th leasehold estate reserving to himself and his co-owners, a one-eighth overriding royalty on the south twenty acres of said tract of sixty acres. The

consideration therefor recited in the instrument is $1.00 and other good and valuable consideration, and was dated the first of October, 1924, filed for record October 30, 1924. In truth and in fact the consideration for this assignment, or a six-eighth leasehold estate to J. R. Staley and J. C. Wynne was $6,000.00. Thereafter, on or about the 8th of October, 1924, Daniel Bond conveyed to F. C. Carter, Fred Carter, and I. A. Fine, the middle twenty acres of said sixty acre tract, which instrument being dated the 8th of October, 1924, was filed for record on October 15, 1924; the instrument reciting the consideration to be $1.00 and other good and valuable consideration, but in fact and in truth the same was $10,000.00. Both of these instruments heretofore recited reserved to Daniel Bond and his joint owners, one-eighth of the overriding royalty and a 6/8th working interest sold between the first and the eighth of October, 1924, for $16,000.00. Thereafter on the 27th of October, 1924, Daniel Bond conveyed the north twenty acres of the above described sixty acres to J. T. Barkley and W. R. Meados, reserving a one-fourth overriding royalty; thereby conveying only to J. T. Barkley and W. R. Meadows five-eighths leasehold estate. The consideration recited in the instrument dated
1452 the 27th of October, 1924, and filed for record October 27, 1924, was $10,000.00 and other valuable considerations, but in fact and in truth it was $20,000.00 for 5/8ths working interest. There was received therefor these assignment for these working interests, reserving to Daniel Bond and his co-owners, the overriding royalty above referred to, the 1/8 overriding royalty on the south forty acres, and one-fourth on the north twenty acres, the total sum of $36,000.00. There is an expense attached to the sale of these assignments as follows, abstracting expense $71.00, attorneys fees $32.50, making a total of $103.50 netting to Daniel Bond and J. T. Harrell and C. E. Basham from the sale of these working interests, with a reserved overriding royalties, $35,896.50, which was divided as follows: Daniel Bond, fifty percent, $17,948.25, C. E. Basham, Twenty-five percent, $8,974.12, J.

T. Harrell twenty-five percent $8,974.15. I have the deposit slip where that was divided. The amount coming to J. T. Harrell was deposited to his credit in the City National Bank on October 29, 1924, two days following the completion of the last sale to Barkley and Meadows. A like deposit to C. E. Basham was made on the same date, the credit to Daniel Bond is not shown. The original deposit slip has been shown to counsel for the Wichita Royalty Company. Daniel Bond lived in Vernon, kept his bank account in the Waggoner National Bank of Vernon.

Thereafter, on November 7, 1925, Daniel Bond executed to J. T. Harrell an undivided one-fourth interest
1453 in the 1/8th royalty on the south forty acres of said sixty acre tract, as shown by certified copy of the assignment filed for record November 14, 1925. On the similar date, Daniel Bond executed a similar assignment to J. T. Harrell for one-fourth interest in the one-fourth overriding royalty on the north twenty acres of said above described sixty acres, which assignment was filed for record November 14, 1925.

Similar assignments of similar dates and same proportions were made to C. E. Basham.

The title to J. T. Harrell and C. E. Basham's interest from the time of its acquisition in January, 1924, until November, 1925 remained in the name of Daniel Bond for convenience, but sometime prior to the 7th of November, 1925 negotiations were started between J. T. Harrell and C. E. Basham, with G. W. Peckham for the sale of part of their interest in the above described royalty and resulted in the first sale.

About November 7, 1925, J. T. Harrell and C. E. Basham, having their interests in their names, in the royalties above described, conveyed on November 9, 1925, to G. W. Peckham, one-half of their royalty in the above described sixty acres for the consideration of $30,000, paid as follows—$15,000.00, paid November 12, 1935, as shown by the deposit ticket of J. T. Harrell in the City National Bank of Wichita Falls, Texas, as well as the ledger sheet of J. T. Harrell; one-half thereof going to J. T. Harrell

and one-half to C. E. Basham. The remainder of
1454 $15,000.00 was evidenced by three notes totaling $15,000.00, which notes were paid by G. W. Peckham on the following dates—November 15, 1925, $5,023.00; November 27, 1925, $5,026.00; February 2, 1936 $5,100.00. This total amount was divided equally between C. E. Basham and J. T. Harrell and deposited to the credit of the same parties, in the City National Bank and shown by the deposit slips on the respective dates and the ledger account of J. T. Harrell on those dates. The amount constituted principal and interest on the three notes of $5,000.00 each. The deposit slips for each of those have been introduced in evidence.

Q. Now, then, there was a second sale to G. W. Peckham?

A. There was.

Q. I do not mean to G. W. Peckham, the Wichita Royalty Company?

A. Yes, sir. Just prior to the first of January, 1926, in December, 1926, J. T. Harrell and G. W. Peckham had negotiated for the purchase from W. S. Curlee a tract of land known as the "W. S. Curlee land" of forty acres, immediately adjacent to the Sibley-Taylor Addition to the City of Wichita Falls, southeast of the original townsite of the City of Wichita Falls, agreeing to pay W. S. Curlee for the said forty acre tract of land in [redacted] the sum of $5,135.50 in cash, and the assumption of $2,814.00 in notes. This deal was consummated January 8, 1926, W. S. Curlee conveying to J. T. Harrell and G. W. Peckham the said forty acres of land in Wichita County, Texas. The deed is recorded in volume 243, page 577 of the Deed records of Wichita County, Defendant's Exhibit 14, in this record.

I do not think we had a written contract, I am detailing
the actual consideration. The deed recites the
1455 consideration to be $4,814.00 and the assumption of two notes of $1,000.00 each and his note

for $814.00. The grantee agreed to pay the taxes for the year 1926, however, there was an additional expense in the acquisition of this property which was paid by J. T. Harrell and G. W. Peckham in addition to the cash consideration recited in the deed, of $4,814.00, of $321.50. My best recollection is that there was the taxes on the property which J. T. Harrell and G. W. Peckham purchased, and other expenses paid by J. T. Harrell and G. W. Peckham. The ledger sheet of J. T. Harrell shows that on January 9, 1926, there was a debit of $2,567.75 on the account of J. T. Harrell in the City National Bank, which was the payment for J. T. Harrell's undivided one-half interest in the Curlee property. I cannot find that check. The records do reflect a similar check for a similar amount of G. W. Peckham's.

Mr. Boone:
We offer the check in evidence.

DEFENDANT'S EXHIBIT 154.

Wichita Falls, Texas Jany 8, 1926, 88-130 11. The City National Bank of Wichita Falls "19" "2", Pay to the order of Curlee Land $2567.75 (Perforated) Paid 1-11-26 (Signed) G. W. Peckham No indorsements.

The Witness:
There was deposited to the credit of W. S. Curlee on January 9, 1926, the sum of $4,749.10, made up by the checks of J. T. Harrell and G. W. Peckham. The consideration as shown by the deposit slip of W. S.
1456 Curlee was $4,749.10, and the check of J. T. Harrell for one-half interest was $2,567.75, and a check of G. W. Peckham of like amount of January 8, $2,567.75, making a total of $5,135.50. Evidently there was some expense attached to the clearing of this title, which took up the difference what Harrell and Peckham

paid for it, in the sum of $386.40, a matter of back taxes and other expense.

The Curlee tract then being in the name of J. T. Harrell and G. W. Peckham, some time during these negotiations G. W. Peckham negotiated for the purchase from J. T. Harrell and C. E. Basham of the balance of their royalty in the sixty acres known as the Stephens Royalty.

Q. At that time, did he negotiate that for the Wichita Royalty Company, that second sale, was that to the Wichita Royalty Company?

A. Yes, sir.

Q. The second purchase, then, was for the Wichita Royalty Company?

A. Yes, sir. On January 1, 1926, J. T. Harrell and C. E. Basham agreed to sell G. W. Peckham the remaining half of their royalty in the Stephens sixty acres of land in Wilbarger County, Texas, for $25,769.07. I do not think that agreement was in writing. Consideration as follows: $2,201.32 paid on January 15, 1926, going to the credit of J. T. Harrell and C. E. Basham, one-half each, as shown by the ledger sheet of J. T. Harrell of date January 16, 1926, of $1,100.66; and one the 23rd of January, 1926, G. W. Peckham conveyed his one-half interest to J. T. Harrell in the Curlee forty acre tract of land as shown by certified copies of the deed hereto referred to. This interest of G. W. Peckham in the Curlee tract of land was taken in by J. T. Harrell and C. E. Basham for $1,000.00 above the amount of what G. W. Peckham had paid for said half interest, to $3,567.75.

1457 The balance of the consideration of $20,000.00 was evidenced by notes, three in number; the first one for $10,000.00 was paid January 25, 1926, in the amount of $10,028.00, the second one being a five thousand dollar note, was paid March 6, 1926, for $5,060.00; the third one being a note for $5,000.00, was paid March 31, 1926, totaling $5,085.00; making a total payment of the notes, $20,000.00 plus interest of $175.00. These payments were credited to the account, one-half to J. T. Har-

rell and one-half to C. E. Basham as shown by the deposit slip and ledger sheets of the City National Bank on the respective dates of said payments. The payment of these were evidenced by personal checks of G. W. Peckham, dated January 15, 1926, payable to J. T. Harrell and C. E. Basham for $2,201.32, marked on same, "For Vernon property," but in fact meaning the second purchase of the Stephens Royalty and was made and charged to the account of G. W. Peckham in the City National Bank on January 16, 1926, after having been indorsed by J. T. Harrell and C. E. Basham.

The first check, dated January 16, 1926, is Plaintiff's Exhibit 71. Up to that time I did not know who the real purchaser was of this second deal, I thought George Peckham was buying the property. At that time I accepted the note from George Peckham. Thereafter there was a deed executed or requested for me to be executed on this property. Defendant's Exhibit 8 is the deed, dated January 1, 1926, acknowledged January 28, 1926. At the time he gave me this first check, he likewise gave
1458 me the note, signed by G. W. Peckham. I do not have the notes, they were delivered to Mr. Peckham. They were paid off by the second or third payment. I first learned that this property was to be conveyed to him, or was being purchased for the Wichita Royalty Company at the time of the execution of the deed, January 28. I remember distinctly taking the notes of G. W. Peckham for the property.

The second check in payment of this second purchase, was a personal check of G. W. Peckham dated January 25, 1926, payable to J. T. Harrell and C. E. Basham for $10,028.00 and paid by the City National Bank of Wichita Falls on January 25, 1926, after having been indorsed by J. T. Harrell and C. E. Basham. The third check on this purchase was dated March 6, 1926, being the personal check of G. W. Peckham, payable to J. T. Harrell and C. E. Basham for $5,060.00, and paid out of the personal account of G. W. Peckham on March 6, 1925, after having been indorsed by J. T. Harrell and C. E. Basham. The

fourth check on this second purchase was dated March 31, 1926, being the personal check of G. W. Peckham payable to J. T. Harrell and C. E. Basham for $5,087.00. Paid by the City National Bank of Wichita Falls on April 1, 1926, after having been indorsed by J. T. Harrell and C. E. Basham, evidently in writing the check there was an error, J. T. Harrell and G. W. Peckham, but which was allowed to go to the credit of J. T. Harrell and C. E. Basham. This constituted the entire purchase price of the Peckham deal on the Stephens Royalty.

1459 Some time after that the negotiations started for the purchase by G. W. Peckham of the balance of the royalty owned by J. T. Harrell and C. E. Basham, out of what is known as the Stephens land in Wilbarger County, Texas, G. W. Peckham came to J. T. Harrell and C. E. Basham and requested them to make a deed to this property, not to him directly, but to the Wichita Royalty Company, which J. T. Harrell and C. E. Basham did. The deed from C. E. Basham to the Wichita Royalty Company, a certified copy being referred to on the second deal, was dated January 1, 1926, and had thereon revenue stamps in the sum of $26.00, showing that the consideration therefor was in excess of $25,000.00. This deed, however, was not acknowledged by J. T. Harrell, and C. E. Basham, until the 28th of January, 1926, and after the execution for filing and record by J. T. Harrell and C. E. Basham, G. W. Peckham's interest in the Curlee tract of land, after the first payment of $2,201.32 paid by G. W. Peckham on January 15, 1926, and after the second payment or the taking up of the first note of $10,000.00 by the payment to J. T. Harrell and C. E. Basham on January 5, 1926, of $10,028.00, this deed from J. T. Harrell and C. E. Basham evidently conveying the royalty interest as of January 1, 1926, to take care of the royalty runs during the month of January, 1926, and was not executed until the 28th of January, 1926, and not filed for record until February 4, 1926 as shown by this deed. J. T. Harrell was unaware of the ownership of the Wichita Royalty Company of the second sale until along about the time of

the execution of this deed on January 28, 1926,
1460 when G. W. Peckham informed him that he wanted him to convey it to the Wichita Royalty Company.

This royalty known as the Stephens Royalty was at and prior to the sale thereof, paying large revenue.

The records reflect that the first sale of the Stephens Royalty, G. W. Peckham sold on November 9, 1925, this same royalty acquired by G. W. Peckham from C. E. Basham and J. T. Harrell was sold to Wotola Royalties Incorporated, and the Tolowa, as shown by the deed records in Volume 103, page 1415 of the deed records of Wilbarger County, Texas, for a consideration in excess of $34,000.00 on November 24, 1925, as on the first deed, there were revenue stamps of $4.50, and on the second deed of $30.50, showing that the royalty was sold to these two companies for approximately thirty-five thousand dollars.

This royalty began producing in March, 1925. In November, 1925, the price of oil was $2.046. In December, 1925, the price of oil was $2.071, and $2,122. In January, 1926 the price of oil was $2.111.

The income from the royalty from the first sale which was made on November 9, 1925, to G. W. Peckham for $30,000.00 showed that the royalty had produced during the month prior thereto, October, 1925, an amount sold to G. W. Peckham, the sum of $3,702.10. In the month of December, 1925, the royalty known as the second deal had produced during December, 1925, the sum of $3,877.49.

It therefore shows that the royalty on the first
1461 sale would pay out if it continued to produce that amount, within less than ten months, and the second sale at the price of $25,769.07 would pay out in less than seven months. The above gives a detailed account of the transaction known as the Stephens Royalty between George Peckham, myself and the Wichita Royalty Company.

Up until the time Mr. Peckham told me he wanted the deed made to the Wichita Royalty Company, I thought I was dealing straight with George Peckham.

At the time I made the sale of the second royalty in January, 1926, I sold the same for slightly less than we did the first sale in November, but we had acquired the revenue from November and December. At the time of the sale I was acquainted with the reasonable value of royalties of the type I was selling to George Peckham and the property was reasonably worth what we sold it for. Mr. Bond, my partner, did not sell any portion of his. The first tract to the Wotola and the Tolowa companies that I sold to George Peckham in November, sold for more than we sold the second tract to him. I have forgotten the consideration of the Staley Wynne to the Humble Company. There were a number of wells on this sixty acre tract of land, producing from different sands, large producers. Both the first and the second sales were equal amounts, on account of the royalties that had been produced, that is, considering the oil runs.

I also had a transaction with George Peckham
1462 in what is known as the Porter Ranch, I had nothing to do with it other than put up my money. I did not have any title of that property in my name. Knight and Hines were the purchasers, they owned an undivided one-half interest in the property, they were the parties who negotiated the transaction for that tract of land. The land was conveyed to Knight & Hines as trustee, and in the conveyance is reciated who was putting up the money, one-fourth by Harry Hines, one-fourth by W. T. Knight, one-eighth by J. T. Harrell, one-eighth by C. E. Basham, one-eighth by W. L. Robertson, and one-eighth by George W. Peckham. I did not know the Wichita Royalty Company in that transaction. Each time there was a payment due on the Porter Ranch transaction, I paid my pro rata part. The first I knew that the Wichita Royalty Company owned anything in the Porter Ranch was after Mr. Peckham's death, before that I considered that he was individually the owner of the interest in the Porter Ranch just the same as I was. At the time of the purchase of the Porter Ranch, $10,000.00 was paid in cash, and I put up $1,250.00, and here are the

checks making that payment; one November 14, 1925, for $500.00, payable to W. T. Knight; one December 18, for $700.00, payable to Knight & Hines; one for $50.00, December 19, 1925, that is the last one to Kinght & Hines. I do not have the date as to when I made the deferred payments, those notes were taken up from time to time as they matured, but at no time did I fail to pay my pro rata part of the deferred indebtedness. None of those payments were ever made to George Peckham
1463 or anybody connected with the Wichita Royalty Company. Some of those notes were sold, I think Mr. Tad Wilson owned one of the notes, Mr. Ben G. O'Neil owned one of them, and I think one of the notes was renewed a time or two. I think everybody signed the note, that is where we made a mistake, it cost me some money, because some of the parties were not able to pay their pro rata part and it was divided up among the partners. After Mr. Peckham's death, Mr. Scannell informed me that the Wichita Royalty Company was claiming an interest in the Porter Ranch.

I also had an interest in a small royalty, prospective oil property in Wheeler County, with George Peckham—I bought a small interest from him and paid him the money for it. I paid $1,000.00, that is all there was to it, I think they drilled a well on it recently, and I get fifty cents a month out of it. I have the check here dated November 10, 1926, for that royalty. George Peckham gave me a deed. I had nothing to do with the buying of that royalty or the selling of it.

I had nothing to do with the buying or selling of the Porter Ranch to the Wichita Royalty.

I think George Peckham was also interested with me in a cheap government lease in New Mexico. There was a party living in New Mexico sold some of those cheap government leasee for two or three cents an acre, and I bought a few, and I think George Peckham bought some of them, but it was not a joint ownership, they were bought and paid for and forgotten, because they
1464 lapsed, and there was no development. I lost that investment.

I had nothing to do with selling George Peckham the Porter Ranch and I did not have anything to do with causing George Peckham to buy the property known as the Wheeler and Gray County property. I only put my money into all of these properties.

The Marlborough Addition was a joint venture in which I was interested, and also Mr. Peckham, that is, George W. Peckham, W. H. Peckham, J. A. Kemp and myself. George Peckham and W. H. Peckham originated that purchase. They solicited me to go into the deal as a joint venture. I will have to refer to the record for the details; on September 19, 1925, J. A. Kemp and J. T. Harrell and G. W. Peckham and W. H. Peckham each acquired by deed, Highland Irrigation Company, one-fourth interest in 50 acres of land adjacent to the City of Wichita Falls known as the Marlborough Addition. I had nothing to do with the ownership of the Highland Irrigation Company, that was a separate and independent corporation. G. W. Peckham had no interest as far as I know, in the Highland Irrigation Company. The parties paid and agreed to pay the following consideration, a cash payment of $15,477.00, two notes due September 19, 1926, $15,477.00 due September 19, 1927, and two notes due September 19, 1928, in the same amount, making a total consideration of $61,908.00. The Marlborough Addition is adjacent to what is known as the country club estates. We thought it was a valuable piece of property in 1925 we paid a big price for it. There was a great deal
1465 of money being spent on the country Club Addition, at that stage the development in that neighborhood had spent about two million dollars in the acquisition of the property and the development, and the Marlborough Addition joined that country club addition. It was thought to be the best resident section of Wichita Falls. At that time I was fairly familiar with the value of real estate in this vicinity, where the Marlborough Addition was located. I thought the price was reasonable. Under date of January 8, 1926, the same parties acquired an additional 6.01 acres of land from

the Highland Irrigation Company and paid and agreed to pay as follows—that is the second acquisition, the payment of $1,818.00 two notes due January 8, 1927, $1,818.00, due two notes January 8, 1928, $1,818.00, and two notes due January 9, 1929, $1,818.00, making a total consideration of $7,272.00. The note for eight percent from date. I don't think there was any deflation in the value of property between September 19, 1925, and January 8, 1926. I did not have anything to do with soliciting George Peckham to buy. I did not know any parties interested in the deal except J. A. Kemp, G. W. Peckham, W. H. Peckham and myself. I did not know at that time that the Wichita Royalty Company was claiming it. That completed the consideration of that land, out there. There was a substantial outlay for improvements, the land was platted, laid off in city lots, part of it paved, modern conveniences were installed, such as sewer and water and gas and lights. There were some lots sold and houses built by private owners. I
1466 thereafter made payments of my pro rata part on those notes; dated September 22, 1925, paid September 25, 1925, payment to Highland Irrigation Company for $3,869.25; January 8, 1926, $1,818.00; On January 11, 1926, I gave a check to the Highland Irrigation Company for $454.50, which was paid by the bank out of my account. Both of these checks represent my undivided interest in the first purchase price of these two tracts of land, which I exhibit to counsel for Wichita Royalty Company. In September, 1927, I paid my pro rata part of the matured notes, $4,797.87.

Immediately after the purchase of this property in 1925, the owners obligated themselves for advancement of funds to develop the property; on November 20, I paid a check for $250.00 which check was originally written to G. W. Peckham and then changed to W. H. Peckham and indorsed by W. H. Peckham and W. H. Peckham got the money, it was paid by the bank 11-21-25. My check for the matured notes is Plaintiff's Exhibit 92. On September 4, 1926, I gave a check to the Marlborough Addition for

$150.00, "Assessment for expense." That was my pro rata part. On June 3, 1926, check payable to the Marlborough Addition for $3,000.00, "Credited to Marlborough Addition." That was charged to my account. May 19, 1926, check for $2,000.00, payable to the Marlborough Addition, "Assessment for improvements," indorsed by Marlborough Addition by G. W. Peckham. On May 8, 1926, check for $3,750.00, payable to Marlborough Addition, indorsed Marlborough Addition, by G. W.
1467 Peckham, the above checks were for my pro rata part in that matter, and were all charged to my account at the bank, and have been submitted to the attorney for the Wichita Royalty Company. Each of the owners to the Marlborough Addition made similar payments, no owner ever advanced any money for me, I put up my own money. From the time of the purchase of the Marlborough Addition, until the death of George Peckham in November, 1929, I did not know of anyone owning any interest in that addition except J. A. Kemp, G. W. Peckham and W. H. Peckham and myself. I had no notice that the Wichita Royalty Company was claiming an interest in the Marlborough Addition.

Since this case has arisen, I have examined the Marlborough books somewhat.

In the late fall of 1929, we had the stock market crash, with which we are all familiar, and which was the beginning of the depression, that has affected very materially real estate values. After George Peckham's death, E. E. Scannell was appointed sole trustee of the Wichita Royalty Company, and Mr. Scannell asserted ownership to the Marlborough Addition, that is, a one-half interest. He continued to assert that interest during the year 1930. In that year there was a suit filed by the City National Bank against the Wichita Royalty Company. After the suits were filed there was an understanding that there would be some liquidation of some of the property and a payment on the note within a reasonable time,
1468 and on that agreement the suit was dismissed. Prior to the stock market crash there was an

agreement and understanding between the then owners of the Marlborough Addition, that they would change the name of the Marlborough Addition to what is known as the Texas Investment Company; prior to George Peckham's death, plans had been made for incorporating the property known as the Marlborough Addition and the charter had been applied for. After the stock market crash in 1929, E. E. Scannell as sole trustee for the Wichita Royalty Company went forward with the transaction of the Texas Investment Company and proceeded to accept stock in that company for a one-half interest of the Wichita Royalty Company. Mr. Scannell attended all meetings and continued to do so during 1930.

In all my dealings with George Peckham, I did not know of any time during his lifetime that I was dealing with or had any interest in the property in which the Wichita Royalty Company had an interest, save and except the Stephens Royalty. I had no reason to believe at any time that George Peckham was not dealing honestly and fairly with his concern. I had faith in George Peckham's honesty and integrity.

The conveyance of the second royalty, or the second deal on the Stephens Royalty was for less sum than I had previously sold him the first interest.

1469 Re-Direct Examination.

By Mr. Humphrey:

The Stephens Royalty transaction, and the Marlborough transaction, were independent and on my part individually not connected with the bank. The City National Bank did not have any interest either directly or indirectly, in the Stephens Royalty, nor the Marlborough Addition, nor the Porter Ranch.

Prior to the time Mr. Scannell became trustee, I had not had any knowledge of or acquaintance with him, when he became trustee he conferred with me with reference to the Marlborough Addition and with reference to the various checks of George Peckham that he claimed

should have been credited upon certain notes that the books of the Wichita Royalty Company showed should have been paid upon the notes, payable at the City National Bank. I offered Mr. Scannell access to the books and records of the City National Bank at that time, and he came in and made an investigation. I did not know of any agreement, and never made any with Mr. Scannell, whereby he agreed with Bill Peckham that any of these matters should be concealed for a period of time, I was not a party to such agreement, either individually or on behalf of the bank. From the death of George Peckham and prior thereto, I have been willing to furnish to the Wichita Royalty Company or its stockholders, or Mr. Scannell, a complete record of all the ledger accounts and books and records of the City National Bank, and have done so, prior to this hearing, that is, the bank offered those records— I offered the records in connection with the question of credit to Mr. Scannell—that was in 1930. Mr. Scannell never claimed that he had more money
1470 on deposit in this bank, in his records with this bank, than our statement to him actually showed —the only connection with Mr. Scannell, was the amount of the note, $22,000.00.

Re-Cross Examination.

By Mr. Rogers:

The way I understand it, the only controversy in the early part of 1930, was the asserted claim by the trustee of the Wichita Royalty Company for a credit on a group of items that he said should have been credited on the note. The first lawsuit was upon the same notes, executed by the Wichita Royalty Company, that we are suing on now.

When I was giving my statement of the second sale of the Stephens Royalty, I stated, that January 1, 1926, J. T. Harrell and C. E. Basham agreed to sell the Wichita Royalty, that statement was made after I learned that it was to the Wichita Royalty, but in fact at the time the sale

was made to G. W. Peckham—in making my statement, I used the word "Royalty Company," and I meant originally it was to G. W. Peckham.

All the details of the Marlborough enterprise were left to Mr. Peckham, and that continued throughout his life.

Agreement: Mr. Humphrey:

It is agreed the Texas Investment Company was a corporation which took over the assets of the Marlborough Addition. The charter of the Texas Investment Company had been subscribed to and acknowledged
1471 by Mr. Harrell, Mr. Kemp and G. W. Peckham, prior to the death of G. W. Peckham, and these three individuals who subscribed to the charter of the Texas Investment Company also executed a deed to the Texas Investment Company, conveying to the Texas Investment Company the assets of the Marlborough Addition. Neither the charter nor the deed had been filed for record at the time of Mr. Peckhan 's death, but after Mr. Peckham's death and after Mr. Scannell became trustee, the charter was filed, and the deed was likewise filed of record. That is what I understand the facts to be.

Mr. Rogers:

All right. If that is not correct, I will agree upon any correction to be made.

The Witness:

The date the City National Bank of Wichita Falls sold under pledge agreement all of the capital stock of the Texas Investment Company to the City National Bank of Wichita Falls, was December 29, 1930, and the City National Bank of Wichita Falls still owns the capital stock of that corporation. I do not know whether this corporation was dissolved under the laws of Texas when it joined in a petition to remove this case to the Federal Court or not. My indorsement is still on the deficiency to the

City National Bank of Wichita Falls, among the Texas Investment Company notes. I never have sued myself.

As I stated the other day, the estate of Mr. J. A. Kemp is insolvent, and will pay a very small amount, if anything, not in excess of ten cents, however, he has quite a lot of stuff undisposed of. His estate has not paid the unsecured creditors any amount as yet. The ap-
1472 proximate total amount of the outstanding unsecured creditors' claims against J. A. Kemp's estate is three or four hundred thousand dollars. The estate has not been entirely liquidated. The remaining assets of that estate consist largely of real estate, farm lands, and city property. There has been a settlement made on most of the unsecured stuff, and the only encumbrance on most of it is on taxes. Unless real estate values rise considerably, the Kemp estate will not pay the unsecured creditors.

If I recall, the notes executed to the Highland Irrigation Company by the Texas Investment Company, or the Marlborough Addition, are entirely paid, however, the records will show. That enterprise owes the City National Bank the deficiency, and there might be some current expenses, a relatively small amount.

The check dated June 24, 1925, for $206.40, paid June 25, 1925, of G. W. Peckham, and payable to my order, the memorandum in the corner says, "On account of New Mexico investment." That check was paid to me. I think perhaps Mr. Peckham sold some of this New Mexico land and got the money for it, and this was a division. I didn't sell any of it to Mr. Peckham. Mr. Peckham and I bought in the same undivided deal. There is a similar check also to C. E. Basham, who was interested in the New Mexico stuff, and I now turn that check over to counsel for Wichita Royalty Company for inspection.

My $1,000.00 check, to George Peckham, dated
1473 November 10, 1926, has upon it in parenthesis "Wheeler County." That is not my handwriting. The notation is 1/16th royalty, which I wrote, and I wrote the remaining portion of the check. The "Wheeler Coun-

ty," seems to have been written at a different time. I don't know whether Mr. Duncan, my former bookkeeper wrote that "Wheeler County," on there or not. Before the trial in 1932, Mr. Duncan and Mr. King were employed to go into the various accounts and work up information concerning the transactions that were complained of by the Wichita Royalty Company. Mr. Duncan kept my books for a long period of time, two or three years. Mr. King was an accountant here in Wichita Falls. Mr. King made a report to the bank and to counsel, and I had that information at the time of the other trial, but I have not looked at it since that time. Mr. Carson does not have that information. I do not remember at the other trial that counsel had a book with the various transactions set out in it, there might have been one. I do not recall any complaint being made at that time by my auditors not being able to find any checks they wanted. Of course, the check-up at the other trial and this trial are altogether different, in other words, we then begun at about the beginning of the lawsuit, the notes that we filed suit on, we begun in that trial in the early part of 1926, and did not concern our selves with transactions prior to that time, our auditors did not go into it, and neither did yours.

1474 C. A. ROGERS, a witness for the plaintiff, being first duly sworn, examined in chief by Mr. Humphrey, testified as follows:

My name is C. A. Rogers. I am in the oil business. I was acquainted with G. W. Peckham during his lifetime. Plaintiff's Exhibit No. 51, check for $225.00, dated 10-24-25, is a check made to me, commission on royalty deal in Cross Plains, either royalty or lease, I think it was a royalty. We made several purchases for ourselves, and several for other people on a commission basis, I know that it was for commission George Peckham paid on a Cross Plains transaction. At that time there was con-

siderable activity down there, they had a new pool right in town, and that is where it happened.

Cross Examination.

By Mr. Rogers:

It developed that part of this property we bought was just across the street from the pool. We were buying leases and royalties down there. I was connected with the United Royalties Company as its president. I think I made some kind of a deal down there with A. J. Mathis and his wife, and the chances are that we owned part of that, I have a vague recollection of this matter, I looked it up in my old bank statement, and I found this Peckham Cross Plains Royalty $225.00, deposited on October 24, and I am inclined to think that at the same time we purchased or bought an interest in this same Mathis
1475 land. This deed from A. J. Mathis, Defendant's Exhibit 18, seems to have been attached to a draft and drawn on G. W. Peckham, and was delivered to him upon payment of the draft, it further appears that the grantee's name, Wichita Royalty Company was in different typewriting, from the remainder of the instrument. It is my remembrance that I bought that at Mr. Peckham's request, and he paid me a commission on it. I wish to make a statement right here, my partner at that time was J. D. Combes. He was in there and I was in there, we were operating at that time in the south central part of Brown County, which was some thirty miles from there, and we went up and made that play, made a little investment, made some purchases for others on a commission basis, and the whole deal flopped in a short time. My partner might have made this transaction. I note in my record, when I received this $225.00, I immediately paid $112.50 of it to J. D. Combes, we were on a partnership basis. Personally I have no recollection of the details of the transaction, but it must have occurred, or it would not have been on my books and this check would not have had my signature. The property was in the town of Cross Plains, and the production did not stand up,

I have no permanent record in my mind because the thing was over and I forgot it. There was a great deal of trading down there, but it soon stopped. There was probably a little of this excitement south of town, but we were playing north just ahead of it.

1476 Re-Direct Examination.

By Mr. Humphrey:

I bought an interest in Wheeler and Gray Counties from George Peckham to the United Royalties, that was sold to me a year or two ago. I got for that interest seven or nine thousand dollars, I would have to look it up to be exact.

Re-Cross Examination.

By Mr. Boone:

As to this Cross Plains play, I would say it was thirty or forty days after we made our purchase before the boundaries of the field were determined, because when we purchased those properties, they were within a few locations of us, and this depth was about fourteen hundred feet, and they drilled dry holes there. I couldn't tell you much about the development, because we did not spend any time out there, except to look at the general situation. I do not know how long after it started before this property was not considered in the pool, but I would say it was condemned within thirty or forty days.

Re-Direct Examination.

By Mr. Morrow:

The United Royalty Company bought some lots, and that is the property that was condemned in thirty or forty days. The Wichita Royalty Company may have bought some interests in the same thing.

Mr. Rogers asked me about the name being filled in in typewriter, and it may have been signed by the
1477 sellers without knowing exactly what was going to be done with it, and filled in at Cross Plains; frequently a man goes out to buy properties, and it is a matter of indifference with the sellers who the purchaser is, so long as he gets the money, and he goes and fills out his papers without knowing who the purchaser is going to be, then they fill in the name when they get that information. I know I sent one royalty in here from Oklahoma and we would have taken it all, but we had three partners before we finally paid off the bank. It does happen, that a man will go out and get a piece of royalty and then parcel it out, however, I could not say that that is the custom, because usually when we bought anything we had it placed or were going to buy it ourselves.

Re-Cross Examination.

By Mr. Rogers:

As a rule when we bought property we took it in the name of our company. This property at Cross Plains, which Mr. Peckham paid us a commission on, was in the town and to the north of production, the best I remember. It was out on the North edge, but not in the sub-division. I never had anything to do with passing on the title of lands we bought down there. It is my recollection as to this Mathis property that I bought for Mr. Peckham, that I bought it sufficiently ahead of the date of its delivery, as that Mr. Peckham had time to examine the title to see what he was getting, I usually took ten days for examination. Then after the title was examined, that is
1478 the requirement satisfied, Mr. Mathis drew a draft on Mr. Peckham and it came up here and Mr. Peckham paid it, and that is all I know about it. From the description in this deed, it is my judgment that this property is in the north east corner of the townsite, and the production never did extend out there. My town property was between that and the pool, and was condemned a short time after I bought it.

Re-Direct Examination.

By Mr. Humphrey:

I do not mean to testify about this property, that it was bought ten days before Peckham paid for it, I do not remember the details of the transaction, except what I have testified to. There was considerable activity down there which continued until the dry holes came in. I think the activity lasted thirty or forty days.

J. T. HARRELL, recalled for further cross examination by Mr. Rogers, testified as follows:

As to the memorandum substituted for the missing check heretofore testified to, I don't know whether that is in the handwriting of Mr. King or Mr. Duncan, I would not know without comparison of the handwriting. I did not handle any of the detail on the former trial of this case, and do not know about the memoranda
1479 which was placed in the State Court records with reference to any check or ledger account, I don't know whether there were any checks missing at that time or not. The auditors gathered this information up as best they could. I do not know whether my former auditor saw every check that George Peckham wrote in his lifetime, or during the period covered in this controversy or not. So far as I know, at the time of the State Court trial, the Security National Bank records were available, I don't know when they were destroyed. W. H. Peckham, the administrator of G. W. Peckham's estate is friendly to the bank, and a customer of the bank. I do not think I am associated with him in any business deals now. I did not have any interests with him in East Texas, it was in the newspaper that Bill Peckham and I had sold two or three hundred thousand dollars worth of stuff down there, but, unfortunately, I was not associated with him. Bill Peckham has given me access to everything he has of George Peckham's. I do not know wheth-

er the bank has the income tax return of G. W. Peckham for several years or not. I knew that Bill Peckham had sold out his interest in the Marlborough to George Peckham. I don't remember the dedication of the Marlborough, the records would be the best evidence. So far as I know, it is true that the Marlborough Addition plats are filed May 26, 1926, at 2:30 P. M. and upon that plat is an application signed by W. H. Peckham, J. T. Harrell, G. W. Peckham, dated May 24, 1926, and that W. H. Peckham's deed to G. W. Peckham was dated March
1480 6, 1926, and filed for record March 25, 1926, conveying two tracts of land; and that the dedications and restrictions signed by we three on May 24, 1926, filed June 5, 1926, recorded in volume 246, page 278, Deed Records of Wichita County, Texas—so far as I know, those dates are correct. I had very little to do with the spending of money on the Marlborough Addition. The records will indicate such expenditures; I imagine we would not sell any lots before we dedictated the addition.

I testified in the former trial of this case in February, 1932, and in that trial I testified, after refreshing my memory with respect to the Stephens Royalty and various things in regard to that royalty; in that case I testified I sold this to G. W. Peckham, and that the first time I knew I had sold it to the Wichita Royalty Company was when you handed me the original deed, that is in the record you have before you.

Mr. Rogers:

Didn't your own counsel ask you the following questions, and didn't you respond to your own counsel's inquiries as follows:

"Q. What was it you first sold?

"A. We sold to G. W. Peckham half of our interest of 1/16 overriding royalty, 1/32 it would be.

"Q. What did you get for that?

"A. We got thirty thousand dollars.

"Q. Then did you make another sale of it later on?

"A. Yes, sir.

1481 "Q. What did you get for that?

"A. Approximately twenty thousand dollars.

"Q. What was that last transaction, how much in cash and what else did you get, if anything?

"A. There was some trade in the last transaction. Mr. Peckham and I owned a certain piece of land adjacent to Wichita Falls, consisting of approximately forty acres or a little less than forty acres, and that was taken as a part of the consideration from Mr. Peckham on this deal.

"Q. How much did he pay you in cash in addition to this land, or do you recall?

"A. I think he paid us twenty thousand dollars.

"Q. And this interest in this forty acres?

"A. Yes, sir.

"Q. And he paid for it?

"A. Yes, sir.

"Q. And it seems to be a valuable royalty?

"A. Yes, sir, a valuable royalty.

"Q. Did you know who he was buying it for?

"A. Bought it for himself, so far as I know.

"Q. You were not familiar with the other transfer of half of it to Wichita Royalty Company and half of it to some other concern which it is not connected with?

"A. Not at all."

1482 Q. Now, that was the testimony in the other trial, wasn't it, as shown at pages twenty two and twenty-three of the former transcript?

A. I think so.

Q. And wasn't this your further testimony,

"Q. Did that sale of that royalty to George Peckham in any way have anything to do with any transaction you ever had with the Wichita Royalty Company or the bank?

"A. None.

"Q. A separate and distinct transaction between you and Mr. Basham on the one hand and George Peckham on the other?

"A. Yes, sir.

"Q. And Peckham paid for it?
"A. Yes, sir."

Q. That was your testimony on the former trial, too?
A. I believe so.
Q. And upon further direct examination, did you on the other trial give the following testimony?

"Q. No. 84 is the Stevens Royalty that you sold Peckham. The voucher deposit and check were introduced in evidence and marked 'Plaintiff's Exhibits 86, 87 and 88,' respectively, the next one is $15,769.70, check No. 461, No. 84, is the Stevens Royalty, that he bought from you and Mr. Basham?
"A. Yes, sir.
"Q. What does that show No. 84 about the purchase of the one-fourth royalty?
1483 "A. He purchased one-fourth of the royalty under the Stevens forty acres operated by Staley, et al, and Barclay Meadows, in the south Vernon field.
"Q. That is the royalty Mr. Basham sold Mr. Peckham?
"A. Yes, sir.
"Q. You got $20,000.00 cash for it, and a half interest in his farm, is that true?
"A. I got a half interest but not in the farm.
"Q. You and Mr. Basham?
"A. I already owned a half interest in the forty acres that being a half of his which was one-fourth of that land. That left Basham with a quarter interest in the farm and me with three quarters.
"The Stevens Royalty interest cost Peckham $20,000.00, and a half interest in the farm.
"A. Yes, sir.
"Q. Do you know what he paid for the farm?
"A. Yes, sir, $200.00 per acre, I think there was some short, not a full forty acre tract.
"Q. Approximately eight thousand dollars?
"A. Yes, sir.

"Q. In other words, it was worth as much when you traded with Peckham as it was when you bought it?

"A. I think it was not very long after we bought it.

"Q. The royalty cost Peckham $20,000.00 and
1484 a half interest in this farm, that was what it cost Peckham, wasn't it?

"A. Yes, sir.

"Q. And showed he turned his royalty to his company for twenty-five thousand and some odd dollars?

"A. Yes, sir.

"Q. Now, did you know at the time you sold the royalty that he was buying it for his company?

"A. My dealings were with Mr. Peckham personally, he gave me his personal check and his personal notes in payment of the property.

"Q. And what he did with it later on, you were not informed or concerned about?

"A. Or interested.

"Q. But anyway, if he transferred one-fourth of that to his company he transferred half of what he got from you and Mr. Basham?

"A. That is right.

"Q. If he transferred it for $25,769.07, full one-half interest cost him $50,000.00, half interest in this farm, did it not? What did the full interest cost him that he acquired from you and Mr. Basham?

"A. You are talking about the second transaction?

"Q. No, both of them.

"A. It cost him $50,000.00 and a half interest in his farm."

1485 Q. You testified to that, didn't you, Mr. Harrell?

A. I think so.

Q. And was the further question asked you?

"Q. This Stevens Royalty, you testified he paid you and Mr. Peckham $50,000.00 together with a half interest in a little forty acre farm?

"A. That is right.

"Q. And the records show that he sold half of it to his company for approximately $25,750.00?

"A. Yes, sir."

You testified to that, didn't you, Mr. Harrell?

A. I think so.

Q. And didn't you testify at the other trial, pages 224 to 225, that you took this forty acre farm for $2,407.00, being one-half of what was shown by the deed to have been paid by you and Peckham?

A. Whatever the record is.

Mr. Humphrey:

I think the record would be the best evidence. I don't think he can remember what he testified five or six years ago.

Mr. Rogers:

I will read it then.

(By Mr. Rogers):

Q. Page 24, didn't you testify as follows:

"Q. I just want to get the date of this deed on the forty acres, that forty acre deed you were talking about in your testimony is dated when?

"A. From Mr. Curlee?

"Q. On the 6th day of November, 1925?

1486 "A. It is on the 8th day of January, 1926.

"Q. And the consideration was what—"

that does not mean eight thousand, does it?

A. No, sir, not that much, the only difference is fractional acreage.

Q. That is what I say, "Now, the deed, what date from George to you?

"A. From George to me, in January, 1926.

"Q. What is the consideration recited there?

"A. $10.00 and other valuable considerations and the payment of the note for $1,000.00 due one year after date, and note for $1,000.00, due two years after date, August 24, 1925, and note No. 3 for $814.00, said notes described in a deed from J. Kerr filed for record in Volume 250, page 334, etc.

"Q. All right, let us figure out what you say you paid $50,000.00, and half of all of that, how does that figure out, get your pencil and see how much you paid for that, and you say it was worth when you sold it as much as it was when you bought it, which was $7,600 and something?"

"A. Unpaid balance $2,114.00 leaves $4,814.00.

"Q. What, then, did you pay for his one-half interest in dollars, his half interest was worth $4,000.00?

"A. Well, approximately. I testified to that.

"Q. You figured there was an equity of about $1,407.00?

"A. About $2,400.00.

1487 "Mr. Boone:
$2,414.00?

"A. Yes, sir."

that was your testimony, wasn't it?

A. Yes, sir.

Whatever the records show there, is correct, as to the Stephens Royalty and the Curlee deed, those transactions have no connection. I do not remember as to the date, but I do remember why we bought the forty acres, and it had no connection with the Stephens Royalty, because we bought it on speculation, on account of activity in the Sibley-Taylor Addition. I would have to refer to the records to tell you positively and definitely when I first found out that the Wichita Royalty Company was the grantee in that deed, it is dated January 1, 1926, that is

the date of the instrument, the acknowledgment was taken later. I have no recollection as to the date I signed the deed. This is the second Stephens Royalty transaction. I said that this deal became effective at 7:00 o'clock November 3, 1925. I don't know as to that deed, it would be in the contract, the division order, or something of that kind—oil properties have division orders. I would be inclined to think that the deed was executed the date of the acknowledgment. I think the notary public was Mrs. Ward, who worked in my office, or Miss Brewster, she is in California. According to this deed, I knew that the Wichita Royalty Company was acquiring this property by deed from me and Basham, in January, 1926. My transaction was with George Peckham, but the
1488 deed was with the Wichita Royalty Company. We sold to George Peckham and he sold it to the Wichita Royalty Company, as far as I know. It is my testimony that we sold this property to G. W. Peckham and that he sold it to the Wichita Royalty Company and we executed a deed direct to the Wichita Royalty Company. I knew that we were taking in a piece of property as a part of the consideration, for its purchase and sale, that belonged to G. W. Peckham, that was a transaction between Peckham and myself, that was this Curlee tract that Mr. Peckham and I owned jointly. According to this memorandum, Peckham paid $2,567.75, and I took in that from George Peckham as a part of the consideration for my conveying to Peckham the Stephens Royalty to the Wichita Royalty Company, I took in for $3,567.75. Our purchase price was on the basis of $1,000.00 more than he paid for it, I never thought anything about him making a $1,000.00 on the transaction. I knew what we paid for it, and I knew what he was getting for the other property. My trade with George Peckham was verbal. For the Stephens Royalty he was going to pay $20,000.00 in cash. I bought the Curlee land for whatever the deed recites as a cash consideration, which is $4,814.00 and the assumption of certain notes. This land did not change in value in a short time, it was a speculative piece of property.

I took the Curlee land in as a part of the consideration for the conveyance to the Wichita Royalty Company on the second Stephens Royalty Company sale, un-
1489 divided one-half interest in the land, $3,567.75. The revenue stamps on the deed from Harrell and Peckham to the Wichita Royalty Company calls for $26.00 in revenue stamps, and the deed from Harrell and Peckham to the Wichita Royalty Company calls for $26.00 in stamps, which would make the consideration in excess of $25,000.00. All I know is what the records show, that we took in the total consideration, $25,944.07, including interest. I do not have any independent recollection of that trade except what is shown by the original instrument. I suppose I made an income tax report on that, I will bring it in if I can locate it. It looks like George Peckham made $1,000.00 on the land, and I did not question it, I don't think. There is nothing about this trade I am ashamed of, that is a clean cut trade, value received, all the way around. As to why it was that George Peckham and I gave our two checks for $2,700.00 and some odd dollars apiece and that Walter Curlee got a deposit of $4,700.00, I think we made a settlement of some items against that thing. The deed obligated Mr. Peckham and I to pay the 1926 taxes, I don't know when they were paid.

I cannot, for the moment, locate the Curlee deposit slip. I have now found my check for $2,567.75, being the same amount as G. W. Peckham's check, both of them payable on the Curlee land, both of them payable at the City National Bank on January 6, 1926, Mr. Peckham's check being Defendant's Exhibit 154. My account was charged with that amount of money as was also G. W. Peckham's account. W. S. Curlee got credit for $4,749.10,
1490 the balance of it was a matter of some delinquent taxes, the best I can recollect. That would not make the bank's books out of balance the amount of the difference, if we withhold the cash at the time the deposit was made, in order to take care of that difference—we gave Curlee a note and elected to go pay these items our-

selves, that would be what happened. These items that are presented here are checks signed by G. W. Peckham for $2,567.75, and by myself, for $2,567.75, which represents the cash consideration, total cash consideration, of that transaction, and those two checks were charged against the accounts of the respective parties. They are payable to the Curlee lands, from the memorandum. W. S. Curlee may have owed the bank something on that day, that might explain it, and he paid that amount. I think I can satisfy you on that.

When it came to the sale of the Stephens Royalty, then George Peckham's sale to me of his interest in the Curlee tract was a part of the Stephens Royalty, he made $1,000.00 on the land deal. George Peckham kept paying me out of his personal account, even after I knew and learned that he had turned this to his royalty company, naturally I knew that he would be reimbursed by the royalty company for what he was paying, or a portion of it. Undoubtedly it was true that the Royalty Company was paying for the purchase. I do not have any independent recollection of George Peckham telling me at the time of his signing, or at any time, that he turned this property to his royalty company—he undoubtedly made the conveyance to the Wichita Royalty Company. He did
1491 not say to me that he was going to get paid by the Royalty Company, and he would in turn pay me. I never discussed with him why he made the $1,000.00 profit. The records will show as to whether or not I made G. W. Peckham, trustee of the Wichita Royalty Company, a loan of $15,000.00 after January 18, 1926—the City National Bank loaned George Peckham $15,000.00 on January 16, it was. The proceeds were deposited to the Wichita Royalty Company's account January 18, 1926. I have not sought personally to analyze all of these accounts. That is the work of an auditor or an accountant.

Frequently when loans are made by a bank, of $15,000.00 or $25,000.00, the lending banker inquires the purpose for which the proceeds of the loan is going to be used.

Neither of the $2,567.75 checks, Curlee land, bear in-

dorsements; that would indicate that the bank handled those items for Mr. Curlee and gave him a deposit slip for it.

When the bank takes properties as security on substantial loans, they sometimes have the titles examined, it depends on the individual and the amount of the loan. There was a time several years ago when the titles were not examined, of course, where there is a lot of property and a financial statement is the usual thing. I did have a financial statement of the Wichita Royalty Company or G. W. Peckham, but I don't know whether they are here now or not, here is one—I have a list of properties that was submitted in connection with the line of credit, submitted by George Peckham April 30, 1928, for
1492 the Wichita Royalty Company, showing a list of their properties. This instrument bears no signature. This is George Peckham's memorandum down here, "Income $1,500.00 per month." That is in his handwriting.

I took blanket deeds of trust from the Wichita Royalty Company, I have taken several that have been released. In taking the security, I did not have the titles examined, because the Wichita Royalty Company made a very good financial showing. They owed nobody except us. George Peckham kept his indebtedness pretty well confined to the bank, and we felt perfectly comfortable on his situation. We took the deed of trust as a safeguard. I knew from general information the connection George Peckham had with the Wichita Royalty Company, he handled the business. I never looked into his authority, it was common knowledge that he was trustee of that company.

As to what notes were involved in the bank's transaction with the directors on December 31, 1931, when the directors borrowed $100,000.00 at the First National Bank, I had rather look that matter up from the records, and give you a detailed account, I can tell you the purpose of the loans; it would be the individual deposit, not a capital structure deposit. The thing that we were suffering for at that time was shortage of cash and if you made

a deposit in the bank, that would help the cash position of the bank, not necessarily a contribution to capital. The cash would be deposited to all their accounts, or to one trustee, until the item was liquidated at the
1493 other institution. The bank would owe the directors—I can get that information and tell you exactly how it happened. That $100,000.00 was not a bank transaction, it was an individual transaction. I mean by that, of course, if it was deposited in the bank, the bank will owe the directors just like it will owe you, if you deposited $10,000.00 in the bank, it was a deposit liability. We needed cash on that date and that provided the cash. The proceeds of that note went to the credit of the City National Bank in the First National Bank of Wichita Falls. I don't know what they did with the proceeds. We do not have a general ledger of the bank, we have a sheet that we put in the machine there on which is the notes and transactions through the day, it is a detailed register, daily statement. This is December 26 to January 8, 1932.

As to the expense of this litigation, I expect my counsel to be reasonably paid. Mr. Carson is working on a regular salary, but Mr. Lambert and Mr. Carson and my counsel and many bookkeepers and stenographers have been working on this matter. I don't think we have had much outside help. We have paid the Court cost and traveling expenses, etc., in a substantial sum. I will prepare for you a statement as to what we have spent in this matter.

Re-Direct Examination.

By Mr. Boone:

Mr. Rogers read my testimony with reference to the second sale of the Royalty to George Peckham when I said I had just gotten $20,000.00. half in-
1494 terest in the Curlee land out there—I remember him reading that testimony—but I will say that at the time of the other trial of this case I had not completely investigated the matter, and we have found some additional items. I found $22,201.00 and some odd cents that

we paid on that, which was the total consideration for the second payment, plus a half interest in the Curlee land. In addition thereto, when this land was purchased from W. S. Curlee, I have since found, and now have already introduced in evidence, George Peckham's check to the Curlee land for $2,567.75, Defendant's Exhibit 154.

Mr. Boone:

We introduce a check of the same date, as Defendant's Exhibit 155.

DEFENDANT'S EXHIBIT 155.

Wichita Falls, Texas, 1-8-1926, The City National Bank of Wichita Falls "2" "19". Pay to the order of Curlee Lands $2567.75, 176762. (Perforated) Paid 1-11-26 No indorsements (Signed) J. T. Harrell.

(The above exhibit is the same as Defendant's Exhibit No. 165. hereinafter photostated and placed in the record at the request of Mr. Boone).

The Witness:

On September 17, 1926, I paid some additional amounts on the Curlee lands, taking up some of the indebtedness, $1,050.00.

That deed that was introduced in evidence from J. T. Harrell and C. E. Basham to Wichita Royalty
1495 Company, was executed after he gave me those notes for the purchase price; the deed shows to be dated January 1, and the original deed is dated, being Defendant's Exhibit 8, January 1, 1926, the acknowledgment January 28, 1926, and the checks paying off the first note January 25, 1926, Plaintiff's Exhibit 69. $28.00 of that check was interest, showing the notes he had theretofore executed for that much interest; that check was given before this deed was executed here by me to the Wichita Royalty Company. At the time I sold this second

sale of Stephens Royalty to George Peckham, up until this deed was executed on the 28th of January, 1928, I did not know anything about the Wichita Royalty Company having any interest in it, the entire transactions were with George Peckham.

Re-Direct Examination.

By Mr. Humphrey:

Neither of the checks number 237 and 246, plaintiff's exhibits 161 and 162, were deposited to Peckham's individual account in the City National Bank, because they are made payable to the Security National Bank and bear the indorsement of that bank. If I answered that either of these checks were deposited to the credit of G. W. Peckham, it was an error on my part. In 1926, I had no knowledge of George Peckham making any profit on any deal he ever had with the bank. I knew nothing about the $1,000.00 profit on the Curlee tract. I did not know anything about the consideration moving between George Peckham and his company for the Stephens Royalty.

1496 My transactions and the payments on that royalty were with George Peckham personally. He paid me his personal check and conveyed to me a half interest in the Curlee tract, I had no knowledge as to what consideration the royalty company paid him. As to my knowledge or information as to what profits Peckham made, it is merely a conclusion reached from the evidence as introduced here, and these instruments. As to my recollection of the transaction between myself and Peckham or Peckham and the royalty company, I do not recall anything about the sale of the Stephens Royalty and do not remember the details of the transaction. On the former trial I testified as to the consideration, from information furnished me by the bookkeeper and from the investigation made by the accounts with reference to this matter. I have presented Peckham's checks and Mr. Basham's check and my checks in support of this testimony.

I have never employed anybody and Mr. King did not undertake to make a complete audit between Peckham and the Wichita Royalty Company and the City National Bank, or any other bank that Peckham did business with. Mr. King was not instructed, and did not undertake to examine the books of the Wichita Royalty Company, I have not had that done until recent months, after the last trial.

Plaintiff's Exhibit 196, is a statement of the royalties Mr. Peckham left with the bank, showing the royalties owned by the Wichita Royalty Company as of April 30, 1928. The memorandum at the end of that is in Mr. Peckham's handwriting, and says, "$1,500.00 per month income."

Mr. Humphrey:

We offer the statement in evidence.

1497 PLAINTIFF'S EXHIBIT 196.

Oil Properties Owned.

Wichita Royalty Company, Wichita Falls, Texas.

April 30, 1928.

No.	Description	Acres
1.	29/640 of the total production, Northwest corner Block 75, Northwest Field, Burkburnett, Texas	3
2.	50/520 of 3/8 of the total production, Weber Lease, Block 88, Northwest Field, Burkburnett, Texas	10
3.	1/48 of the total production, Block 1, Cannon-Orchard Addition, Burkburnett Townsite	2½
4.	1/64 of the royalty, Evans Tract, Block 818, Northwest Field, Burkburnett, Texas	640
5.	3/22 of the royalty, Lots 19 and E½ 20, Goodwin Addition, Burkburnett Townsite	3

No.	Description	Acres
6.	2/21 of the royalty, Block 1, Lot 11, Goodwin Addition, Burkburnett Townsite...	2½
7.	5/12 of the royalty, North half Block 22, Burkburnett Townsite	2½
8.	1/16 of the total production, 40 acres of Block 819, Michna Land, Northwest Field, Burkburnett, Texas	40
9.	7/192 of the total production, Pickle Lease, Burkburnett Townsite	2
10.	3/64 of the total Production, Lot 4, Sarah Tankersley Survey, Young County, Texas	40
11.	1/10 of ⅜ of the total production, Lot 9, Block 819, Northwest Field, Burkburnett, Texas	5
12.	1/10 of ⅜ of the total production, Lot 10, Block 819, Northwest Field, Burkburnett, Texas	5
13.	(a) 25/520 of ⅜ of the total production, Weber Lease, Block 88, Northwest Field, Burkburnett, Texas	10
	(b) 7/256 of the total production, West 2½ acres, North 5 acres, North 60 acres, Van Cleve Farm, Burkburnett, Texas..	2½
	(c) 5/360 of 7/16 of the total production, South 5 acres, West 12½ acres, Southwest Quarter Block 97, Northwest Field, Burkburnett, Texas	5
	(d) 1/112 of the total production, Lots 1 to to 14 inc. College Heights Addition, Burkburnett Townsite	2½
14.	7/384 of the total production, G. W. Whitman Lease, Taylor Farm, Block 97, Northwest Field, Burkburnett, Texas...	7½
15.	1/6 of the royalty, Block 1, Lot 3, College Heights Addition, Burkburnett Townsite	2½
16.	1/16 of the royalty, A. L. Owen's Land, Bunger Field, Young County, Texas.....	80

No.	Description	Acres
17.	1/8 of the royalty, A. L. Owen's Land, Bunger Field, Young County, Texas.....	80
18.	1/8 of the royalty, J. A. Driver Land, Mid-Continent Pet. Corp. Lease, West 40 acres of South 80 acres, Aynesworth Survey, Young County, Texas	40
19.	1/8 of the royalty, J. A. Driver Land, Continental Lease, East 40 acres South 80 acres, Aeynsworth Survey, Young County, Texas	40
20.	5/64 of the total production, Lot 4, Sarah Tankersley Survey, Young County, Texas	40
21.	1/16 of the royalty, J. A. Driver Land, Sun Lease, South 40 acres, West 80 acres, Auburg Survey, Young County, Texas..	40
22.	1/24 of the royalty, Amerada Lease, Blaydes Farm, Empire Field, Stephens County, Okla.	40
23.	1/32 of the royalty, R. D. Owen's Land, Bunger Field, Young County, Texas	160
24.	1/16 of the royalty, A. L. Owen's Land, Bunger Field, Young County, Texas	80
25.	1/4 of the royalty, R. D. Owen's Land, Bunger Field, Young County, Texas	160
26.	1/24 of the royalty, Seaboard Oil & Gas Company Lease, Bunger Field J. W. Hughes Land, Young County, Texas	100
27.	1/48 of the royalty, McClure Tract, Eastland County, Texas	84
28.	11/384 of the royalty, West half of B. F. Eakin Tract, Slick Lease, Pioneer Field, Eastland County, Texas	50
29.	1/32 of the total production, J. E. Musick Lease, Outer Block 20, Burkburnett, Texas	3
30.	3/416 of the total production, Ellis Tract, Mexia Field, Limestone County, Texas...	50

No.	Description	Acres
32.	1/16 of the total production, Outer Block 24, Burkburnett, Texas	8
33.	1/10 of the royalty, Lou Catt Lease, W½ NW¼ Section 2-15-8, Creek County, Oklahoma	80
35.	1/10 of the royalty, Jomack Lease, W½ of NW¼ of SE¼ Section 28-16-9, Creek County, Okla.	20
36.	1/48 of the royalty, McGaw Tract, Pure Oil Company Lease, Currie Pool, Navarro County, Texas	40
37.	1/48 of the royalty, McGaw Tract, Homa Okla Lease, Currie Pool, Navarro County, Texas	41
38.	17/42 of the royalty, Bob Davis Farm, NE¼ of SW¼ Section 23-16-9, Creek County, Oklahoma	—
41.	1/16 of the royalty, Mary McIntosh Farm, C. E. Cover Lease, Creek County, Okla.	80
44.	1/72 of the royalty, J. W. See Farm, NW¼ of Section 15-24-1, Noble County, Okla.	160
45.	1/16 of the royalty, Mary McIntosh Farm, W½ of SW¼ Section 29-15-10, Creek County, Okla.	80
46.	1/7 of the royalty, Block 2, Lot 7, L. & S. 2nd Addition, Burkburnett Townsite	3
50.	1/20 of the royalty, Minnie McIntosh Farm, SW¼ of SE¼ of Section 29-15-10, Creek County, Okla.	40
51.	1/16 of the royalty, J. A. Driver Land, Sun Lease, South 40 acres, West 80 acres, Auburg Survey, Young County, Texas	40
52.	1/48 of the royalty, McGaw Tract, J. K. Hughes Lease, Currie Pool, Navarro County, Texas	40
53.	3/64 of the royalty, J. A. Novotny Farm, White Eagle Lease, Noble County, Okla.	40

No.	Description	Acres
54.	1/16 of the total production, Tillman-Gesen Well, Section 32-16-9, Creek County, Oklahoma	1
55.	1/72 of the royalty, J. W. See Farm NW¼ Section 15-24-1, Noble County, Okla.	160
56.	1/8 Overriding Royalty, Ellis Holmes Farm, J. D. Davis lease, S½ of SW¼ Section 34-12-12, Okmulgee, County, Okla.	80
57.	3/64 of the royalty, J. A. Novotny Farm, Prairie O. & G. Lease, Noble County, Okla.	40
58.	3/64 of the royalty, J. A. Novotny Farm, White Eagle Lease, Noble County, Okla.	40
59.	3/64 of the royalty, J. A. Novotny Farm, Prairie O. & G. Lease, Noble County, Okla	40
65.	1/32 of the royalty, J. A. Novotny Farm, White Eagle Lease, Noble County, Okla.	40
66.	1/16 of the royalty, J. A. Novotny Farm, Prairie O. & G. Lease, Noble County, Okla.	40
67.	1/8 of the royalty, Ellis Holmes Farm, Eagle Picher Lease, N½ of SW¼ Section 34-12-12, Okmulgee County, Oklahoma	80
68.	1/4 of the royalty, Ellis Holmes Farm, J. D. Davis Lease, S½ of SW¼ Section 34-12-12, Okmulgee County, Okla.	80
70.	1/8 of the royalty, Ellis Holmes Farm, Eagle Picher Lease N½ of SW¼ Section 34-12-12, Okmulgee County, Okla.	80
71.	3/16 of the royalty, Grimshaw Farm, J. E. Dowdle Survey, Young County, Texas	160
72.	(a) 1/320 of the royalty, Beverlin Farm, NW¼ Section 34-25-1, Kay County, Okla.	160
	(b) 1/64 of the royalty, C. W. Goltry Farm, W½ of NE¼ Section 34-25-1, Kay County, Okla.	80

No.	Description	Acres
	(c) 3/640 of the royalty, McDaniel Farm, E½ of NE¼ Section 34-25-1, Kay County, Okla.	---
72.	(d) 1/256 of the royalty, Carmichael Farm, Lots 1 and 2 and S½ of NE¼ Section 3-24-1, Noble County, Oklahoma	160
73.	9/40 of the royalty, Ellis Holmes Farm, Eagle Picher Lease, N½ of SW¼ Section 34-12-12, Okmulgee County, Oklahoma	80
74.	1/32 of the royalty, W. A. Brown Farm, West ½ of 100 acre tract of the Northeast corner of J. B. Barry Survey, Navarro County, Texas	50
77.	1/8 of the royalty, W. 30 acres of E. 50 acres of N. 80 acres of Block 1593, T. E. & L. Co. Sur., L. M. Hayter Land, and N. 100 acres of S. 240 acres of Blk. 1598, W. O. Hayter Land, Archer County, Texas	130
78.	1/16 of the royalty, Block 46 of Meade L. M. Pasture Sub., of D. G. Thomas Survey, Abst. 458, Archer County, Texas	125
79.	1/16 of the royalty, Block 9 of Crawford Pasture Sub. of I. Holman Sur., J. B. Routan Land, Archer County, Texas, and Young County, Texas	117
80.	1/16 of the royalty, N. 40 acres Blk. 21; S. 32 acres Blk. 21; S. 60 acres of W. 80 acres Blk. 22; N. 25 acres of E. 50 of W. 100 Blk. 19; and E. 60 acres of W. 160 Blk. 19, Anderson South Pasture Sub., Archer County, Texas	217
81.	1/4 of the royalty, E. 30 acres of 71 acre tract out of D. Milligan Survey, Callahan County, Texas	30
82.	1/8 of the royalty, E. ½ Section 4, B. B. B. & C. R. R. Co. Sur. Cert. 692, Young and Archer Counties, Texas	320

No.	Description	Acres
84.	1/4 of 1/8 Overriding royalty, S. 40 acres of N. 60 acres of W½ of NE¼ Sec. 83, Blk. 14, H. & T. C. R. R. Co. Sur., Wilbarger County, Texas	40
85.	1/32 of the royalty, W½ of SE¼ of Sec. 43, Blk. 24, H. & G. N. Ry. Co. Sur., Wheeler County, Texas	80
86.	1/16 of the royalty, NE¼ of Sec. 47, Block 24, H. & G. N. Ry. Co. Sur., Wheeler County, Texas	160
87.	1/32 of the royalty, E½ of Sec. 54, Block 24, H. & G. N. Ry. Co. Sur., Wheeler County, Texas	320
88.	1/16 of the royalty, E½ of Sec. 57, Block 24, H. & G. N. Ry. Co. Sur., Wheeler County, Texas	320
89.	1/16 of the royalty, N½ of Sec. 45, Block 24, H. & G. N. Ry. Co. Sur., Wheeler County, Texas	320
90.	1/8 of the royalty, S½ of Sec. 61, Block 25, H. & G. N. Ry. Co. Sur., Gray County, Texas	320
91.	1/4 of the royalty, W½ of SE¼ and NE¼ of the SE¼ of Sec. 59, Block 25, H. & G. N. Ry. Co. Sur., Gray County, Texas	120
92.	1/8 of the royalty, NW¼ of Sec. 60, Block 25, H. & G. N. Ry. Co. Sur., Gray County, Texas	160
93.	1/2 of the royalty, S½ of NE¼ Sec. 35, Tn. 19 N., R. 21 W., Ellis County, Okla. Also full 7/8 oil and Gas Lease thereon	80
94.	1/2 of the royalty, Section No. 54, as the same is shown by the W. D. Twitchell map of the Subdivision of the Bravo Ranch lands, Hardey County, Texas	640
95.	3/16 of 7/8 Lease, 80 acres E. Half of Lot 10, North Anderson Ranch, S. P. Survey No. ..... Archer County, Texas	80

No.	Description	Acres
96.	1/4 of the royalty, SW 60 acres E: Polk Land, Abst. 717 of Wm. Polk Preemption Survey, Archer County, Texas, Also ¼ of ⅞ Lease on the west 40 acres of the same land	60
97.	7/100 of Total Production, E½ of W½ of S½ of SE¼ of Sec. 30, Blk. 9, and NW¼ of W½ of E½ of S½ of SE¼ Sec. 30, Blk. 9, H. & T. C. Ry. Co. Sur., Wilbarger County, Texas	25

1506 In the margin under "97" appears T. J. Milner.

On foot of Exhibit in ink appears "Income $1500 per mo."

The Witness:

Mr. Peckham furnished, from time to time, in the beginning of these transactions, the balance sheets of the Wichita Royalty Company, here is one dated January 10, 1922, one for May 31, 1922, December 20, 1922, and January 15, 1923. The last one shows a capital investment of $714,246.00, surplus $21,996.07, and shows indebtedness of $34,874.12.

Re-Cross Examination.

By Mr. Rogers:

We spent considerable time recently in working up this matter, Mr. Carson has spent most of his time during the last seven months, and we have had a certified public accountant for three or four months.

The Marlborough Addition is a suburban venture.

I don't know whether the estate of G. W. Peckham is insolvent or not, I don't know whether he owes any money, I don't think he has any assets. I would have to refer to the records to see whether or not the bank was

paid all that Mr. Peckham owed it. The administrator sold all of his assets that I know anything about, within a few months after his death. The assets that we had a lien on are all gone.

Aside from the bills receivable, the assets of the old bank are real estate and perhaps some mineral interests.

The bank loaned the money to Mr. Peckham in January, 1926, of $15,000.00, and also March, 1926,
1507 $25,000.00, I was the contact officer for the bank. I wrote out the deposit slip. I think the records indicate Mr. Peckham was the indorser on that obligation. I don't know whether Mr. Peckham put $17,000.00 of the $25,000.00 to his own account or not, that will come under the accountant's analysis. This is the note of March, 1926, Mr. Peckham is an indorser, signed as a surety, the proceeds of the note went to the Wichita Royalty Company, it is not an uncommon practice for a surety to sign on the face of the note. The bank was looking to the Wichita Royalty Company first. He renewed the note May 30, 1926, and signed like he did the original, it was renewed again on August 28, 1926, November 26, 1926, January 11, 1927. I believe that is another note. The note you now hand me, October 13, 1926, is a renewal of the $15,000.00 loan of January 15, 1926. The one of January 11 is also a renewal. In all of these notes G. W. Peckham signed on the face, after the Wichita Royalty Company.

Mr. Rogers:

I offer these instruments in evidence and ask that they be photostated, marked "DEFENDANT'S EXHIBIT 156."

(Said exhibit consisting of the following notes):

Note dated Wichita Falls, Texas January 11, 1927. In the amount of $15,000.00, drawing 8% interest per annum, due ninety days after date, payable to the City National Bank, signed by Wichita Royalty Company by G. W. Peckham, trustee, G. W. Peckham.

Note dated Wichita Falls, Texas, August 28, 1926. In the amount of $25,500.00, due ninety days after
1508 date, drawing interest at the rate of 8% per annum. Payable to the City National Bank of Wichita Falls, Texas, signed Wichita Royalty Company by G. W. Peckham, Trustee, G. W. Peckham.

Note dated Wichita Falls, Texas November 26, 1926. In the amount of $25,500.00. drawing 8% per annum, due ninety days after date, payable to the City National Bank of Wichita Falls. Signed Wichita Royalty Company, by G. W. Peckham trustee, G. W. Peckham.

Note dated Wichita Falls, Texas, October 13, 1926, in the amount of $15,000.00, bearing interest at 8% per annum, and due ninety days from date. Payable to the City National Bank of Wichita Falls. Signed Wichita Royalty Company by G. W. Peckham trustee, G. W. Peckham.

Note dated Wichita Falls, Texas, May 30, 1926, in the amount of $25,500.00, due ninety days after date, bearing interest at the rate of 8% per annum. Payable to the City National Bank of Wichita Falls, signed Wichita Royalty Company by G. W. Peckham, Trustee, G. W. Peckham.

Note dated Wichita Falls, Texas, March 1, 1926, in the amount of $25,000.00, due ninety days after date and bearing eight percent interest per annum. Payable to the City National Bank of Wichita Falls, signed Wichita Royalty Co. By G. W. Peckham trustee, G. W. Peckham.

1509 Mr. Rogers:

We have heretofore introduced in evidence the following bank records: Those of the Wichita Royalty Company from April 1, 1923 to the date of its closing, that is the date—both as to the deposit and the liability record. Also, those of G. W. Peckham for the same period of time, including both the deposit and the liability record. Those

of J. T. Harrell from January 1, 1926, to April 1, 1926, including both his deposits and liability account and the bank records of W. H. Peckham for the entire month of March, 1926.

J. T. HARRELL, recalled for further cross examination by Mr. Rogers, testified as follows:

I have a list of the expense paid by the bank in this litigation.

Mr. Rogers:
We offer it in evidence, Defendant's Exhibit 157.

1510 DEFENDANT'S EXHIBIT 157.

Legal Services and Other Expenses.

Wichita Royalty Comany.

Date		Amount
2-17-32	Mrs. A. B. Eichelberger, Court Cost	$ 40.00
3- 8-32	Bullington, Humphrey & King, Attys'. Fee	2,500.00
3-23-32	Attorneys' Fee	33.50
4-18-32	W. E. Donnelly, Court Reporter	100.00
4-22-32	Sheriff, Ellis Co. Survey Papers	8.40
4-23-32	Court Clerk, Stephens Co., Okla	25.00
12-18-33	Rec. fees a/c Wichita Roy. Co., Paid to Bullington, Humphrey & King	8.75
4- 5-34	Bullington Humphrey & King	10.00
5-11-34	Court Costs, Archer Co.	45.95
6- 8-34	Court Costs, Gray Co.	65.64
5-25-34	Bullington, Humphrey & King, Expense Wichita Royalty	6.75
11-17-34	Bullington, Humphrey & King, Wichita Royalty	28.75
7-17-35	Weeks & Morrow	27.50

Date		Amount
5-27-36	Dist. Clerk, Wichita County, Costs..	212.60
5- 7-36	S. A. Philquist, Clerk Supreme Court	641.35
5-28-36	Brown & Cund, Attorneys, Court Costs, Stephens County, Okla....	75.00
6- 9-36	Sheriff Wichita Co., Court Costs..	499.95
7-27-36	Dist. Clerk, Wichita County, Costs..	292.05
8- 3-36	Tarlton Morrow, Attorney's Fee ..	2,000.00
5- 2-36	Tarlton Morrow	1,000.00
1-29-36	Forms	80.00
10-17-36	Bullington, Humphrey & King....	2,500.00
10- 2-36	Wichita Falls Blue Print	94.70
10- 7-36	H. H. Carson	22.75
12- 9-36	Wheeler Abstract	33.00
12- 5-36	Wichita Royalty Co., Expense.....	18.00
12- 9-36	General Abstract	45.00
12- 7-36	Wichita Falls Blue Print	8.40
12-16-36	Expense, Wichita Royalty Co.	13.50
12-31-36	Carson & Lambert	126.35
12-31-36	J. E. Collins, County Clerk	11.75
1-11-37	J. McFall	10.75
1- 6-37	County Clerk, Archer Co.	11.25
2- 4-37	T. E. Irby, Jr.	853.30
1-11-37	Wichita Falls Blue Print Co.....	6.30
1-12-37	Cigars	10.60
1-27-37	K. M. Patterson	5.00
2-17-37	P. H. Lambert	400.00
2-20-37	T. C. Irby, Jr.	318.10
	Total	$12,189.94

The Witness:

These items were not all paid by the old bank, I will have to identify each item for you. Those expenses were paid either by the old bank or the new. I don't think I have a detailed statement of what I paid, I have paid Mr. Boone $2,500.00, and there has been some incidental expense that I do not have a memorandum of, three or

four or five hundred dollars. I will get that for you. This list is correct down until this morning.

We are working on the information with reference to the Curlee transaction now, and also the income tax matters.

Mr. Rogers:

What are the facts with reference to the Porter Ranch?

Mr. Humphrey:

I can give you the facts. The first note was paid, and the last two notes of $7,366.00 and $7,367.00 were outstanding. The record total showed a beneficial interest in George Peckham. He was dead. There had been a suit filed by the Wichita Royalty Company to assert title to that interest. The Wichita Royalty Company relinquished their interest and Tad Wilson and Ben O'Neal sued for the land on the superior title, and took judgment for that land.

1513 The Witness:

In June, 1935, the land was sold to a fellow by the name of Wolfe.

Mr. Humphrey:

There was no contest on it, the land was not in excess of the value of the notes, and the Court entered a judgment vesting title in the notes in the land in June, 1935.

The Witness:

I have the books as to the December, 1931 transaction, December 29, two notes in the sum of $50,000.00 each were executed by directors and principal stockholders—some of the principal stockholders—of the City National Bank in favor of the First National Bank of this city. The proceeds of that loan were applied, credited, on the obligation of the City National Bank due the First National Bank. In other words, the City National Bank had bills payable due the First National Bank of this city, $150,000.00, and the proceeds of that loan, which was $100,000.00 was credited on that bills payable. The note

was dated December 29, 1931. The actual entry on the bank's book was December 31, 1931. That is the date the note was discounted by the First National Bank. On the same date, $100,000.00 worth of bills receivable were taken out of the files of the City National Bank and set over for the benefit of the makers of the two $50,000.00 notes. Our bills receivable of the City National Bank were reduced in the amount of $100,090.22. The $90.22 was an amount to balance the note—in other words, we could not get an exact $100,000.00 worth of notes so we got within ninety and twenty-two cents, and
1514 made a charge of refund of interest for that amount in order to balance the item. The interest rebate is here. The notation is "Refund of bills payable account of overnotes." It is a memorandum to balance the books. The $100,090.22 of notes held for the benefit of those directors until that obligation was taken care of then came back into the bank, either paid or came back. We have no record of whose notes those were. In explanation of that I will say it was a temporary matter and it was for the purpose of reducing the overline at the First National Bank of this City. They were desirous of being of assistance to us at that time, and the $150,000.00 was an overline with them and the directors were on the obligations at the time and in order to put them in position where they would not be criticised in the examination the directors notes were placed over there and the bank was given credit for it. As to the renewal of the $150,000.00, October, 1931, indebtedness to the First National Bank on January 7, 1932, I had rather you would get that information from somebody else.

H. H. CARSON, recalled for further cross examination by Mr. Rogers, testified as follows:

I have before me photostatic copies and the original records of the First National Bank, covering the
1515 period of time shown by them. This large sheet is the liability journal sheet. The records of the

bank show the daily note transactions. On this record is entered the renewals of the note, and the new notes and the notes paid and credits on the notes and the balance. The date it is handled, the number of days that the note runs, and the number of the note, the indorser, the security, the officer handling the item, interest or discount and maturity date, rate of interest, charges on the notes made, and credit on the notes paid and the new balance, also the maker. If we rediscount an item ordinarily it is entered on there, and it would ordinarily be entered on here if it went out of the bank on a repurchase agreement, it would also be entered here if the note were sold. This one hundred thousand dollar transaction in December, 1931, does not appear anywhere on the notes journal register, the only place it does appear is in the general books.

Mr. Rogers:

I offer in evidence the records of the First National Bank and the City National Bank, excluding the journal, in that it appears that this note transaction is not entered thereon. I wish these instruments photostated.

(Marked "Exhibits, Defendant's, 158, 159, 160 and 161").

THE FIRST NATIONAL BANK

WICHITA FALLS, TEXAS

LIABILITY LEDGER

NAME City National Bank,

ADDRESS City.

DATE OF ENTRY	DATE OF NOTE	NUMBER	CL	R/N	COLLATERAL	ENDORSER	CUR	DEBIT	MATURITY	CREDIT	INTEREST	BALANCE
					FORWARD							
OCT 9 31	OCT 9 31	82873	D	N	J T HARRELL, R O HARVEY, W C ROBERTSON, L A CULLUM, F P TISDERLAKE, J J PERKINS FRANK KELL, W H MARTIN, J A KEMP, C E BARNES, O A JONES, LANGFORD INV. CO TR			50000.00	JAN 7 32		750.00	
OCT 9 31	OCT 9 31	82874	D	N	SAME AS ABOVE			50000.00	JAN 7 32		750.00	
OCT 9 31	OCT 9 31	82875	D	N	DO			50000.00	JAN 7 32		750.00	150000.00
DEC 31 31		82873	D							50000.00		
DEC 31 31		82874	BD							50000.00		50000.00
JAN 7 32		82875	D							50000.00		
JAN 7 32	JAN 7 32	85129	D	R	ENDORSED AS ABOVE			50000.00	APR 6 32		750.00	50000.00
JAN 5 32	JAN 7 32	86454	D	R	ENDORSED		COM	50000.00	APR 6 32		484.67	
JAN 5 32	JAN 7 32	86455	D	R	DO		COM	50000.00	APR 6 32		484.67	150000.00
APR 14 32		85129	D							50000.00		
APR 14 32		86454	D							50000.00		
APR 14 32		86455	D							50000.00		
APR 14 32	APR 6 32	87596	D	R	ENDORSED BY BOARD OF DIRECTORS		COM	25000.00	JUL 5 32		375.00	
APR 14 32	APR 6 32	87597	D	R	SAME		COM	100000.00	JUL 5 32		1500.00	125000.00
JUL 18 32		87596	D							25000.00		
JUL 18 32		87597	D							100000.00		
JUL 18 32	JUL 5 32	89536	D	R		ENDORSED	COM	25000.00	OCT 3 32		375.00	
JUL 18 32	JUL 5 32	89537	D	R		DO	COM	100000.00	OCT 3 32		1500.00	125000.00
OCT 6 32		89536	D							10000.00		
OCT 6 32		89836	D							14999.12		
OCT 6 32		89537	D							100000.00		
OCT 6 32	SEP 5 32	91265	D	R	ENDORSED		COM	14999.12	NOV 2 32		1125.00	114999.12
OCT 6 32	SEP 5 32	91266	D	R	DO		COM	100000.00	NOV 2 32		1125.00	114999.12
NOV 3 32		91265	D							14999.12		
NOV 3 32		91266	D							100000.00		
NOV 3 32	NOV 2 32	99843	D	R	ENDORSED BY BOARD		COM	110000.00	JAN 31 33		1650.00	110000.00
NOV 26 32		91843	D							9925.39		100074.61
FEB 20 33		91843	D							100074.61		
FEB 20 33	JAN 31 33	94168	D	R	ENDORSED BY BOARD OF TRUSTEES		COM	100000.00	MAY 1 33		1500.00	100000.00
MAR 27 33	MAR 27 33	94764	C	N	COLLATERAL DEP.			20000.00	DEMAND		81.97	120000.00
MAR 28 33		94764	C							4745.75		115254.25
APR 7 33		94764	C							15254.25		100000.00
APR 15 33		94168	D							100000.00		0.00

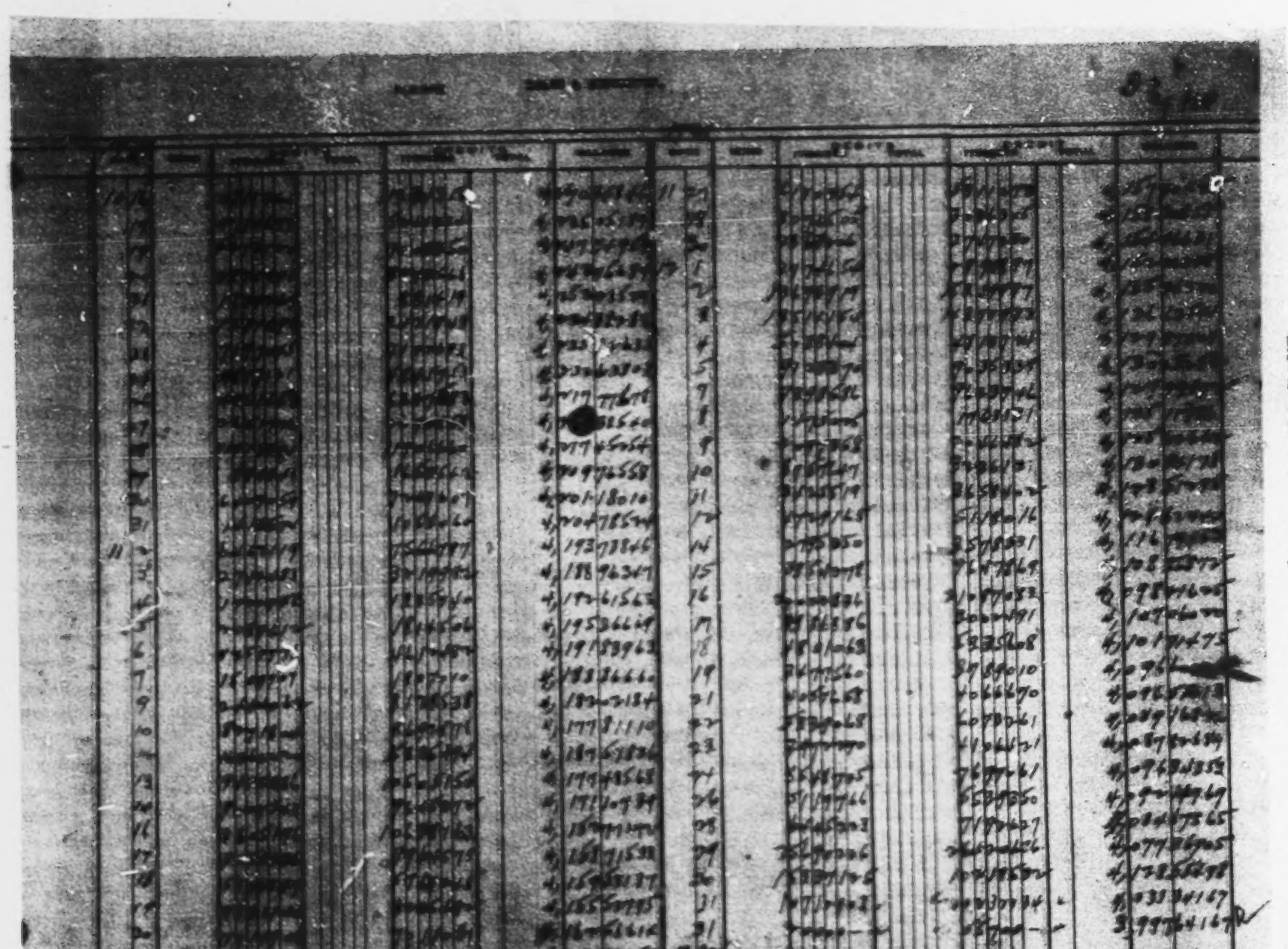
315

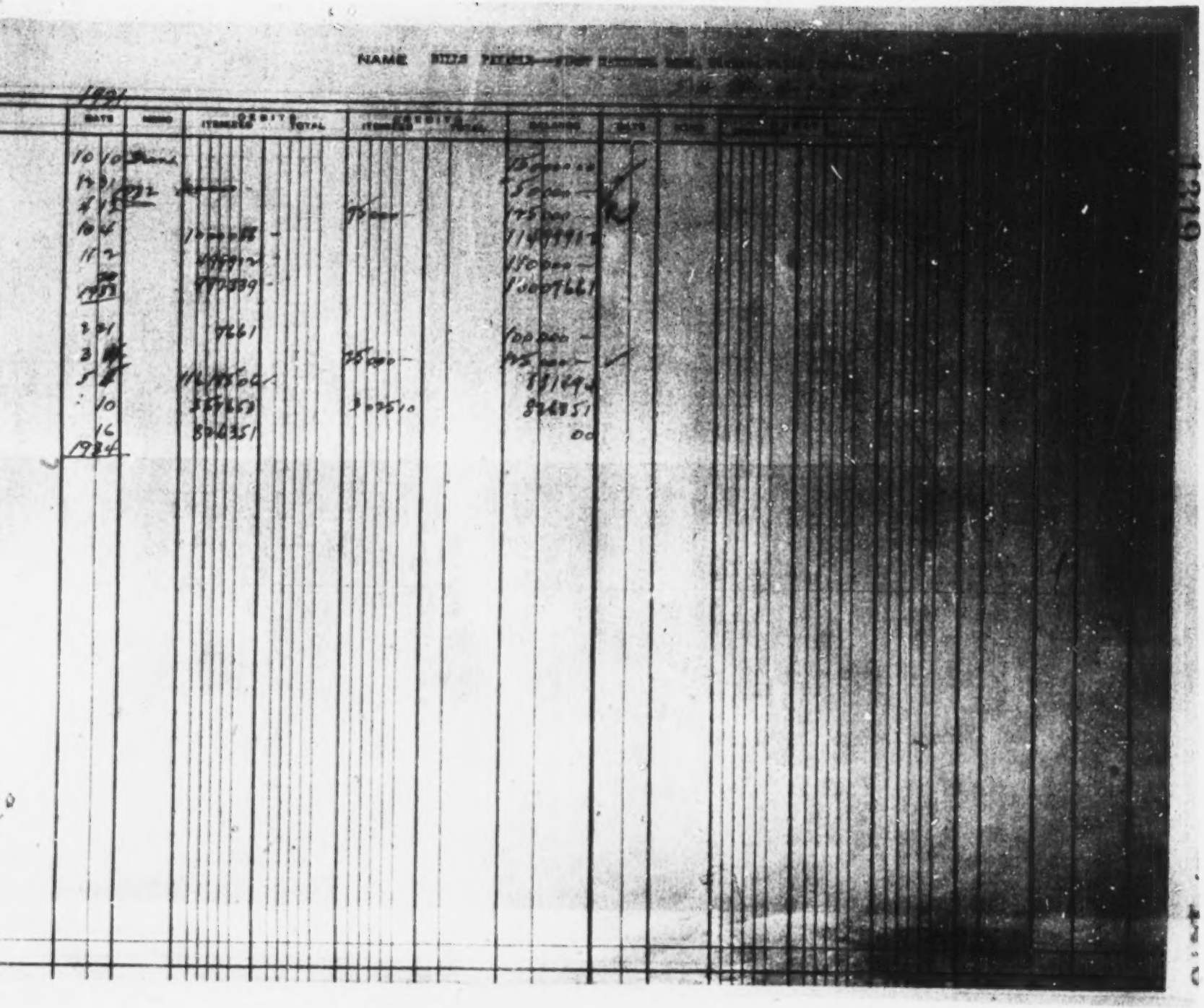
DEFENDANT'S EXHIBIT 156

3:09-CV-213

LIABILITY LEDGER

D.T.159 con





1521 The Witness:

In this transaction the loans and discounts went down and the bills payable went up, the bank did not get any cash—it showed we owed $100,000.00 less on notes payable. The loans and discounts kept gradually declining, they did not go up any. That transaction was not washed out at that time, I would not think, by looking at the loan and discount sheets of the general ledger.

Re-Direct Examination.

By Mr. Humphrey:

Referring to the liability ledger of the First National Bank on December 29, 1931, the City National Bank owed the First National Bank $150,000.00, on December 31, 1931 that was reduced to $50,000.00; the liability on that date showed that J. T. Harrell and others owed the First National Bank $100,000.00.

The two notes of $50,000.00 each which you now hand me, dated December 29, 1931, signed by C. H. Clark, J. T. Harrell, Oral Jones, F. P. Timberlake, W. L. Robertson, Frank Keel, J. Anderson Kemp, N. H. Martin, J. L. McMahon, C. E. Basham, Leslie Humphrey, C. W. Snider, R. O. Harvey, A. H. Brittain, J. J. Perkins and L. H. Cullen, payable to the First National Bank, are the two notes that went into the assets of the First National Bank on that day, the proceeds of which represent the credits on the notes owing by the City National Bank to the First National Bank on that day.

Mr. Humphrey:

We offer the two notes in evidence and ask that they be photostated, Plaintiff's Exhibit 197.

1524 The Witness:

Those men who signed those two notes were either directors or closely identified with the City National Bank of Wichita Falls. By virtue of that transaction, $100,000.00 of the debt of the City National Bank to the First National Bank was reduced or paid. The corresponding entry on the books of the City National Bank in respect to that item, is bills payable to the First National Bank of Wichita Falls, reduced by $100,000.00 on December 31, 1931. Also that is reflected on the loans and discount sheets of the general ledger, shows a reduction of over $100,000.00 in notes on that day, to be exact $130,913.31 was the total amount. The journal sheet shows a reduction of $30,823.09, that is the ordinary payment and handling of the day's notes an ordinary day's business. Taking that thirty some odd thousand dollars from the hundred and some odd thousand dollars leaves $100,090.22. We charged the $90.22 to interest repaid.

Mr. Humphrey:

I offer this instrument in evidence, and ask that it be photostated, PLAINTIFF'S EXHIBIT 198.

Debit Advice: Int rebated We charge your account to cover items listed below: Ref on b/p a/c our note 90.22 Dec. 31, 1931 City National Bank Wichita Falls, Texas RCB.

1525 The Witness:

There is no way that I can identify the $100,000.00 note from the books and records of the bank, that was set aside by virtue of that transaction, I made no individual record of it; all it shows in the general ledger of the bank is that notes of $100,000.00 went off, and it is not shown any collection of those notes. Those notes were just pulled and set aside for the benefit of the directors, by the signors of the notes—not the directors; I can explain how that was handled in this way; we

went through and picked out the notes, they were to take out, and then they would go to the ledger and then take out the corresponding sheet to that note, segregate it, and these sheets and these notes were just set out and the total was run on it, and it was charged to the general books, and those sheets, ledger sheets, and the notes were taken out of the department, and did not come into the bank until his $100,000.00 note had been paid.

I do not have the charter of the bank, but I can get it for you.

Mr. Humphrey:

We offer the charter in evidence.

1526 Re-cross Examination.

By Mr. Rogers:

As to the credits shown by Defendant's Exhibit 159—every time a note that they had, for instance, I have your note in there and it was for $1,000.00 and you paid $200.00 on it, that was under the repurchase agreement of the First National Bank, and we would take your $200.00 and we would in turn give it to the First National Bank and they would give our account credit for it on our repurchase agreement. The collections were made in the City National Bank, and I imagine they would clear a slip on it. We would send them a debit slip, then they would clear it, that would be my idea. We would not write a draft for it, because we would send them a debit slip and they would clear it on us, and we would pay it when it came over, it would run through the clearing house.

Mr. Humphrey:

We offer in evidence the certificate of the incorporation of the City National Bank of Wichita Falls.